TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 320

CHARLES H. GRAVES, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED MARCH 25, 1926

(31,790)

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 12, 1926

[fol. 1]

IN MUNICIPAL COURT OF MINNEAPOLIS

STATE OF MINNESOTA,
County of Hennepin, ss:

COMPLAINT—December 7, 1925

Gilbert E. Harris, being duly sworn makes complaint to the above named Court and says that on the 29th day of November, 1925, within the corporate limits of the City of Minneapolis, Hennepin County, Minnesota, Charles H. Graves, then and there being, did willfully, unlawfully and wrongfully practice dentistry, and did perform dental operations, and in particular did diagnose, treat, cut, drill and crown a certain tooth in the mouth of Harriet Young, a human being, for a fee and reward of Sixteen Dollars ($16.00) paid to the said Charles H. Graves, the said Charles H. Graves not having at the time been registered by the "Board of Dental Examiners of the State of Minnesota" as a licensed dentist, and not having at the time a Certificate of Registration as a registered and licensed dentist in the State of Minnesota, and not having at the time a license to practice dentistry in the State of Minnesota, contrary to the statute in such case made and provided and against the peace and dignity of the State of Minnesota.

Wherefore complainant prays that said offender may be arrested and dealt with according to law.

Gilbert E. Harris.

Sworn to and Subscribed and Complained of before me this 7th day of December, 1925. Oscar Day, Deputy Clerk of the Municipal Court. (Seal.)

[fol. 2] In Municipal Court of Minneapolis

State of Minnesota, Plaintiff,

vs.

Charles H. Graves, Defendant

Demurrer—December 10, 1925

Comes now the defendant in the above entitled action and demurs *the* the complaint herein, filed December 7, 1925, on the following grounds and for the following reasons:

1. The complaint fails to state facts sufficient to constitute a public offense.

2. The complaint fails to state facts sufficient to charge the defendant with the commission of any offense.

3. The statute on which the complaint herein is based is unconstitutional and void in that it is in violation of Sections 2 and 11 of Article I, and Section 34 of Article IV of the Constitution of the State of Minnesota.

4. The statute on which the complaint herein is based is unconstitutional and void in that it is in violation of Section 10 of Article I and the 14th Amendment of the Constitution of the United States.

Dated December 10, 1925.

Russell C. Rosenquest, Attorney for Defendant, 742 Builders' Exchange, Minneapolis, Minnesota.

[fol. 3] In Municipal Court of Minneapolis

[Title omitted]

Statement of Evidence

The above entitled matter came regularly on for trial on the afternoon of January 11th, 1926, before the Honorable Clyde R. White, one of the Judges of the above named court, with a jury.

Appearances of Counsel

Gilbert E. Harris, Esq., appeared for the State; and Russell C. Rosenquest, Esq., appeared for the defendant.

Colloquy Between Court and Counsel

Mr. Rosenquest: We would like a ruling on our demurrer, your Honor.

The Court: The demurrer of the defendant is overruled.

Mr. Rosenquest: The defendant pleads not guilty and demands a jury trial.

(A jury was impanelled and sworn.)

Mr. Harris opened to the jury on behalf of the State.

[fol. 4] Harriet Young, sworn on behalf of the State, testified:

By Mr. Harris:

Q. Your name is Miss Harriet Young?

A. Yes.

Q. Where do you reside?

Mr. Rosenquest: The defendant objects to the introduction of any evidence here on the following grounds: One, the statute on which the complaint herein is based is unconstitutional and void, in that it is in violation of Section 10, Article 1, and the 14th Amendment to the Constitution of the United States; two, the statute on which the complaint herein is based is unconstitutional and void, in that it is in violation of Sections 2 and 11 of Article 1 and Section 34 of Article 4 of the Constitution of the State of Minnesota; three, the complaint fails to state facts sufficient to constitute a public offense; four, the complaint fails to state facts sufficient to charge the defendant with the commission of any offense.

The Court: Objection overruled.

Mr. Rosenquest: Exception.

Q. Where do you reside, Miss Young?

A. 76 Spruce Place.

Q. Minneapolis?

A. Minneapolis, yes sir.

Q. By whom are you employed at the present time?

[fol. 5] A. The Trotter Detective Bureau.

Q. Were you employed by the bureau November 9, and the week prior, of last year, 1925?

A. I was.

Q. Was the Trotter Detective Bureau employed by the State Dental Board to obtain evidence for their complaints against those that were supposed to be practicing dentistry without a license?

A. Yes sir.

Q. As such employee, did you go to the office of Charles H. Graves, the defendant?

A. I did.

Q. Where is his office?

A. 1025 Nicollet Avenue.

Q. In the city of Minneapolis?

A. In the city of Minneapolis.

Q. When did you first go to his office, Miss Young?

A. November 23rd.

Q. 1925?

A. 1925, yes sir.

Q. Describe, if you please, what you saw there in his office with reference to the dental equipment.

A. Well, there was the complete dental equipment, as I have known it, chairs and instruments.

Q. Electric drill?

A. Some drill; I don't know as it is exactly electric.

[fol. 6] Q. Ordinary dental tools around?

A. Yes sir.

Q. What did you ask him to do?

A. I asked him to examine my teeth; I had a sore mouth.

Q. By the way, is the person you saw, the man who sits here?

A. Yes.

Q. His name is Charles H. Graves?

A. Yes.

Q. Tell us what he did, when you asked him to examine your mouth?

A. He examined my teeth and said there was two, one of them an inlay, one tooth that was bothering then, and he also looked at another tooth, and said that that is what was wrong with that too; he said that I should come back the following day and he would remove the inlays and treat the teeth, and fix them up.

Q. Did you go back then on November 24th?

A. We did.

Q. Who was we?

A. Mrs. Carlton.

Q. She is also furnished from your same bureau?

A. Yes.

Q. Is she in court here today?

A. Yes.

Q. On November 24th, tell us what he did.

A. He removed the inlays, and treated the teeth, and packed them.

Q. In removing the inlays, what kind of tools did he use, [fol. 7] so far as you know?

A. Well, he used a drill on them.

Q. An ordinary electric drill that the dentists have?

A. I am not quite so positive about that; I know he used the other instruments, and had quite a time in removing the inlay.

Q. Did he put medicine in your tooth?

A. He did.

Q. How long were you in the chair approximately on that day?

A. Well, I don't know; I would say it was over half an hour or about that time.

Q. When did you next go back to his office, Miss Young?

A. On a Wednesday.

Q. That was the next day?

A. Yes.

Q. Tell us what he did in the treatment of your tooth on that day.

A. Well, he drilled one of them, and he treated and packed the two of them.

Q. On that day, November 25th, 1925, did you pay him some money?

A. I paid him ten dollars.

Q. In cash?

A. Yes.

Q. Did you obtain a receipt for that payment?

A. I did.

Q. I show you State's Exhibit A. and ask you if that is the receipt you obtained after paying the ten dollars, on November 25?

[fol. 8] A. Yes.

Q. There appears on the exhibit C. H. Graves, in handwriting; did he sign that?

A. He did.

Q. Before you?

A. Yes, and Mrs. Carleton.

Mr. Harris: I offer in evidence State's Exhibit A.

Mr. Rosenquest: No objection.

The Court: Received.

Q. When did you next go back to Mr. Graves' office?

A. On a Friday.

Q. The following Friday, after the Wednesday?

A. Yes.

Q. Tell us what he did in connection with your teeth on that date.

A. He drilled both of them.

Q. Anything else?

A. He treated and packed them.

Q. Treated and packed them again?

A. Yes.

Q. When did you next go back?

A. On the following Saturday.

Q. The next day?

A. Yes.

Q. Tell us what he did on that day.

[fol. 9] A. He treated and packed.

Q. When did you next go back to him?

A. On Sunday—Well, I went back again that day, in the afternoon about 4:30, Saturady afternoon.

Q. You came back again Saturday afternoon?

A. Yes.

Q. Did you then come back again on the following Sunday?

A. The following Sunday.

Q. November 29th?

A. Yes.

Q. What did he do on that day?

A. He ground both teeth.

Q. What teeth are they, Miss Young, in your mouth, describe them as best you can.

A. Well, it was the upper double tooth, and also a lower double tooth.

Q. On which side of your mouth?

A. The left side.

Q. On November 29, did you ask him what the total charge was for his services?

A. Yes.

Q. What did he say?

A. He said $16.00 in all.

Q. Did you pay him the balance?

A. Yes, six dollars.

Q. In cash?

[fol. 10] A. Yes.

Q. Did you obtain a receipt for it?

A. I did.

Q. I show you State's Exhibit B, and ask you if that is the receipt you obtained, after paying him the $6.00 for dental work November 29?

A. It is.

Q. There appears in handwriting the name of C. H. Graves on State's Exhibit B. Did you see C. H. Graves, the defendant sign that in your presence?

A. Yes.

Mr. Harris: State's Exhibit B is offered in evidence.

Mr. Rosenquest: No objection.

The Court: Received.

Cross-examination.

By Mr. Rosenquest:

Q. Are you employed by the Trotter Detective Agency now?

A. Yes sir.

Q. When were you first employed by them?

A. It is just about a year ago in February.

Q. Have you worked for them continuously ever since a year ago February?

A. I have.

Q. Who sent you to Dr. Graves' office?

A. Trotter.

Q. After you had been there the first time, and he had [fol. 11] done some dental work and you had gotten a receipt, why did you go back again?

A. Because he hadn't finished the work.

Q. You wanted him to fix the tooth?

A. Yes.

Q. They were paying you to get the dental attention?

A. They did.

Q. You went to Dr. Graves and continued to go there until the work was finished?

A. Yes.

Q. Because you wanted him to do it for you?

A. Not particularly that reason. Well, it had to be done, and I was sent to him to get evidence.

Q. You had been there how many times all together?

A. I went there on a Monday, and every day that week, excepting Thursday which was Thanksgiving, and up to Sunday.

Q. That would be about ten times all together?

A. About six times.

Q. You kept going right along so you could get your teeth fixed up by Dr. Graves?

A. Yes, I did.

Eunice Carleton, sworn on behalf of the State, testified:

Examined by Mr. Harris:

Q. Your name is Mrs. Eunice Carleton?

A. Mrs. Eunice Carleton, yes sir.

[fol. 12] Q. Where do you reside?

A. 405 East 35th Street.

Q. In Minneapolis?

A. Yes, in Minneapolis.

Q. How long have you resided here?

A. About twelve or fourteen years.

Q. In November, 1925, were you employed by the Trotter Detective Bureau of the City of Minneapolis?

A. Yes sir.

Q. Are you still employed there?

A. Yes sir.

Q. Were you called upon together with Miss Young, to go to the office of Mr. Graves, this defendant, for the purpose of securing evidence for the Board, that he was practicing dentistry?

A. Yes sir.

Q. Did you go with Miss Young to his office on the 23rd day of November, 1925?

A. Yes sir.

Q. Where was his office located?

A. 1025 Nicollet Avenue.

Q. In the city of Minneapolis?

A. Yes sir.

Q. Describe what you saw there by way of dental equipment, as best you can.

A. As far as I know he had a complete working outfit, working table, electric drills——

[fol. 13] Q. The ordinary tools you find in a dentist office?

A. Yes.

Q. Did Miss Young get into the dental chair in your presence?

A. Yes.

Q. Were you in the same room?

A. His office is one, the room has curtains and the curtains weren't drawn, at anytime I was up there.

Q. So the curtains weren't drawn at any time?

A. No sir.

Q. Did you see this defendant using cement in the mouth of Miss Young?

A. Yes sir.

Q. Did you see him use the drill?

A. Yes sir.

Q. Did you see him put cotton in the mouth and medicine?

A. Yes sir.

Q. Did you accompany Miss Young back to this defendant's office on various occasions she went back there, as she has testified?

A. With the exception of her Saturday afternoon visit; I went with her Saturday morning, but not in the afternoon.

Q. You were back with her on each of the other occasions?

A. Yes sir.

Q. Were you in full view of the dental chair and of the defendant?

A. Yes.

Q. And of Miss Young during the time you were there? [fol. 14] A. Yes.

Q. Did you stay during the full time she was there on each occasion that you went there?

A. Yes, I did.

Q. Were you present when State's Exhibit A, a receipt, was given by the defendant to Miss Young?

A. Yes.

Q. Was that signed C. H. Graves by the defendant?

A. Yes sir.

Q. Did you see him sign it?

A. Yes, I did.

Q. Did you see Miss Young pay him ten dollars, pay the defendant ten dollars at that time?

A. On Wednesday.

Q. Were you present when State's Exhibit B was given by the defendant to Miss Young?

A. Yes, I was.

Q. And the name appearing in handwriting, C. H. Graves, was that signed by the defendant?

A. Yes sir.

Q. And you saw him sign it?

A. Yes, I did.

Q. Did you see Miss Young pay him six dollars on that occasion?

A. Yes sir.

[fol. 15] Cross-examination.

By Mr. Rosenquest:

Q. Were you up with Miss Young on every occasion, excepting one?

A. Excepting Saturday afternoon.

Q. Did you notice particularly the name on Dr. Graves' office door?

A. Yes, I did.

Q. You noticed that particularly?

A. Yes.

Q. Just what is on his office door?

A. C. H. Graves.

Q. No designation as doctor?

A. No sir.

Q. Did you notice particularly his name as listed in the office directly on the first floor of the building?

A. I couldn't say for sure; I don't remember.

Q. You looked at that, didn't you?

A. I think it must have been there.

Q. Well, didn't you look at it when you went up to his office the first time?

A. I couldn't tell you so sure, I couldn't tell what his name is on the directory.

Q. Was the door open leading from the hallway into Dr. Graves' office every time you were there?

A. I think it was.

Q. Well, aren't you sure?

[fol. 16] A. If I was sure, I would have said it was.

Q. Well, you are not sure; is that correct?

A. I don't remember the door being closed at anytime.

Q. In other words, by standing in the hallway, outside of Dr. Graves' office door, anyone could look right through and see what he was doing inside?

A. Yes sir.

Q. It has been testified to here that there were curtains separating his chair from one other part of the room. Were those curtains ever closed or pulled to at any time while you were there?

A. No sir.

Q. Then, in other works, everytime you were up there, a person could stand in the outside hallway and look right through and see Dr. Graves at his dental chair which has been described?

A. Yes sir.

Q. Are you also employed by the Trotter Detective Bureau?

A. Yes.

Redirect examination.

By Mr. Harris:

Q. Did you notice or have you seen how the name of this defendant appears in the telephone directory?

A. No, I have not.

Q. Or the city directory?

A. No.

[fol. 17] Dr. Robert B. Wilson, sworn on behalf of the State, testified:

By Mr. Harris:

Q. Your name is Dr. Wilson?

A. Yes.

Q. Are you a practicing dentist in the city of St. Paul?

A. I am.

Q. Are you an officer of the Minnesota State Board of Dental Examiners?

A. I am.

Q. What office do you hold?

A. Secretary and treasurer.

Q. As secretary of that organization, do you have the custody and control of the books and records of the organization?

A. I do.

Q. Among those books and records is there a set of books which contain the names of those persons licensed to practice dentistry in the State of Minnesota?

A. There is.

Q. Have you this set of books with you?

A. I have.

Q. Of what, concerning the names of those who are licensed to practice dentistry, do your books consist?

A. We have the names of everyone licensed to practice in this state.

Q. Is it more than one book?

[fol. 18] A. There are four books.

Q. Describe what each of those four contain, so far as names are concerned.

A. Well, they contain the names and addresses of those who are licensed to practice in this state.

Q. Are they alphabetically arranged?

A. One is arranged from A to F, or rather A to E inclusive; F to L inclusive; M to R inclusive, and S to Z inclusive.

Q. If the defendant Charles H. Graves was a licensed practitioner of dentistry, what would his name appear in?

A. From F to L.

Q. Have you that book with you?

A. I have.

Q. Examine it doctor, and tell us whether the name of Charles H. Graves appears therein as a licensed practitioner in the state of Minnesota, as of November, 1925?

A. (Dr. Wilson examines the books.)

Q. Have you examined them before this, Doctor?

A. I have.

Q. Have you found that name in the books?

A. The name is not here.

Q. You say that after making an examination here too?

A. Yes sir.

Q. During the month of November, 1925, and particularly from November 23rd to November 29th, 1925, was Charles H. Graves licensed to practice dentistry in the State of Minnesota?

[fol. 19] A. No sir, he was not.

Q. Was he registered as a registered dentist by the Board of Dental Examiners in the state of Minnesota?

A. No sir, he was not.

Q. During those times?

A. Not at any time.

Q. Has he ever been registered as a registered dentist in the state of Minnesota?

A. No sir.

Q. Or licensed to practice dentistry in the state of Minnesota?

A. No sir.

Q. Up to and including the present time?

A. Yes sir.

Q. I show you State's Exhibit C, and ask you if that is the record of the Minnesota State Board of Dental Examiners, which contains the names of those licensed to

practice dentistry, which names commence with the letter F, and include those up to and including the letter L?

A. It is.

Q. Is that the book you were examining?

A. It is.

Mr. Harris: I offer in evidence State's Exhibit C.

Mr. Rosenquest: Objected to on the ground that no proper foundation has been laid.

The Court: Sustained.

Q. Is that the original record of the State Board of [fol. 20] Dental Examiners?

A. It is.

Q. It is in your control?

A. It is.

Q. And has been for the past three years?

A. It has been for the past three years.

Mr. Harris: I renew the offer.

Mr. Rosenquest: Same objection.

The Court: Sustained.

Q. Is the book kept in your handwriting, doctor?

A. You mean the entries since——

Q. Yes, the entries covering the period November, 1925, up to the present time?

A. Yes.

Q. Is the book a true and correct record to the best of your knowledge and belief?

A. It is.

Mr. Harris: I again renew the offer.

Mr. Rosenquest: Same objection.

The Court: Is it a book which you are required by law to keep?

Witness: Yes sir.

The Court: Any other books kept for that purpose?

Witness: No sir, these four books are all I have.

The Court: Overruled.

Mr. Rosenquest: I would like to ask a few questions to [fol. 21] make the objection clear. Are all the entries in these books here in your handwriting?

Witness: In the past three years.

Mr. Rosenquest: Are these the original records?
Witness: Yes, they are.

Q. The handwriting in this book you put there as a transcription from some other record?

Witness: No sir, it is not.

Mr. Rosenquest: In other words it is just during the last three years that you have personal knowledge of the records contained in this book?

Witness: They are.

Mr. Rosenquest: I renew the objection.

The Court: Overruled.

Mr. Rosenquest: I would like to ask a few more questions. If a man was licensed to practice dentistry in 1900, for some time, you wouldn't know of your own knowledge when he became so licensed, would you, by referring to this book?

Witness: Yes sir, I would.

Mr. Rosenquest: I suppose the book shows—supposing the book showed that a man was licensed in 1900, you would say that he was licensed, because you are giving credence to the record in this book?

Witness: Yes sir.

Mr. Rosenquest: But you wouldn't know whether that was correct or not, of your own knowledge?

[fol. 22] Witness: Not of my own knowledge.

Mr. Rosenquest: I renew the objection.

The Court: Overruled.

Mr. Rosenquest: Exception.

Mr. Harris: I ask that the State be permitted to remove State's Exhibit C, after it has been examined by the Court, on the ground that it is the record of the State Board of Dental Examiners and is cumbersome also.

Mr. Rosenquest: No objection.

Cross-examination.

By Mr. Rosenquest:

Q. Dr. Wilson, you don't claim that Dr. Wilson isn't a competent dentist, do you?

Mr. Harris: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.
Mr. Rosenquest: Exception.

(An adjournment was then taken until 8 o'clock P. M.)

Evening Session

Pursuant to adjournment.

Dr. Wilson resumed the stand.

By the Court: Dr. Wilson, before you answer this question, wait for counsel to object. On the 29th day of November, 1925, was there a Board of Dental Examiners in the state of Minnesota?
Witness: Yes sir, there was.
[fol. 23] The Court: And that is the board of which you were then and are now secretary?
Witness: Yes.
The Court: And these books you have here are the records of that board?
Witness: Yes.

By Mr. Rosenquest:

Q. Doctor, before a man can take the dental examination in this state, he must present a diploma from an accredited dental college?
A. Yes sir.

Mr. Harris: Objected to as incompetent, irrelevant and immaterial, not bearing on any of the issues in this case.
The Court: Well, it is answered.
Mr. Harris: I move to strike the answer out.
The Court: Stricken.

Q. Doctor, what are the accredited dental colleges in this state?

Mr. Harris: Also objected to for the same reason.
The Court: Sustained.

Q. How long is the course of dentistry given by an accredited dental college?

Mr. Harris: Objected to for the same reason.
The Court: It may bear on the constitutionality.

Mr. Harris: I understood you were considering the law as valid, according to the Supreme Court decision. If that [fol. 24] is the ruling of the Court, I think the question is immaterial. In four or five cases they have declared it to be valid.

The Court: On this same question?

Mr. Rosenquest: I don't think it has been approached in quite the same light.

The Court: Sustained.

Q. Doctor, don't you feel that a man can learn as much in 35 years' active practice as a dentist, as he can in three or four years in a dental college, as a student?

Mr. Harris: Also objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. What are your duties as secretary of the Minnesota State Board of Dental Examiners?

A. To keep a record and the files, keep the minutes of the board, and have charge of the books.

Q. Do you have anything to do with the examinations?

A. I do.

Q. What do you have to do with the examinations?

A. I examine the practical work.

Q. Who has charge of the theoretical examinations?

A. The other five examiners, we all have. We work together in the practical work also.

Q. Do you assist the other five examiners in preparing the questions on the theoretical work?

A. I have absolutely nothing to do with that.

[fol. 25] Q. Do your records show from what school the licensed dentists obtain their diploma?

A. They do.

Q. Does your record introduced in evidence show that?

A. No sir, it does not.

Q. Well, what records do show it?

A. The applications.

Q. The applications for examination?

A. Yes sir.

Q. When an applicant comes before you for examination, do you ask him where he expects to practice?

Mr. Harris: I object to that as incompetent, irrelevant and immaterial, and the whole line of questioning, such as counsel has been engaged in, it has been ruled upon by the Court, and I think we are just consuming time.

The Court: I will sustain it.

Q. Do you know Dr. Naegele?

A. Which one?

Q. The doctor who has an office on Western Avenue.

A. Is that Bill Naegele, William E. Naegele? I don't know where his office is.

Q. The doctor has some official position.

A. Yes, I know him.

Q. What is his official position?

A. He is on the legislative committee of the state organization.

[fol. 26] Q. Well, hasn't he some other position than that?

A. Not that I know of.

Q. What do you mean by the legislative committee?

Mr. Harris: Objected to as incompetent, irrelevant and immaterial, having no bearing on the issues in this case.

The Court: Sustained.

Q. Does the board feel that they can pass a man on less qualifications when he indicates his intention of practicing in a smaller town, than when he practices in the city?

Mr. Harris: Objected to on the same ground.

The Court: Sustained.

Mr. Harris: I will ask the Court to instruct the attorney for the defendant not to ask any questions along the same line; we are just consuming time.

The Court: Well, I don't think I can do that; there isn't any way to do that.

Q. Who was secretary prior to you, doctor?

A. Dr. C. G. Gilliam.

Q. Prior to him?

A. C. W. Benson, of Duluth.

Q. Who is president now?

A. Dr. F. E. Cobb.

Q. Prior to him?

A. Dr. C. G. Gilliam.

Q. Doctor, do you feel that the law in this state, in the [fol. 27] case of Dr. Graves, operates so as to prevent competent, qualified men from becoming dentists?

Mr. Harris: Objected to for the same reason, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Rosenquest: Exception.

Q. The state law prescribes a theoretical examination in several subjects, among which is materia medica. What is meant by that?

Mr. Harris: Objected to on the same grounds.

The Court: Sustained. Well, I will overrule it, you may answer that question.

A. Do you mean materia medica?

Q. Well, the state law prescribes the applicant shall be examined in several subjects.

A. That is a theoretical examination?

Q. Yes.

A. Yes sir.

Q. One of these subjects in which the applicant must be examined is materia medica. What is meant by that?

A. You mean by materia medica?

Q. Yes, that term.

A. That is a description of the drugs, the formula and derivatives.

Q. The law also prescribes a theoretical examination in therapeutics. What is meant by that?

[fol. 28] Colloquy Between Court and Counsel.

Mr. Harris: Objected to on the same ground, as no bearing on this case whether the defendant was licensed or whether he committed an offense on the 29th of November, last year.

The Court: I will sustain the objection.

Mr. Rosenquest: An exception.

The Court: As a matter of courtesy, counsel for defendant may have an exception to each ruling.

Mr. Rosenquest: That is all, I think.

Mr. Harris: State rests.

Mr. Rosenquest: If the Court please, at this time I move that this action be dismissed, the complaint dismissed, and the defendant discharged, on the ground that the State has failed to prove the commission of any offense and on the ground and for the reasons offered at the beginning of this trial, for the exclusion of any testimony.

The Court: I will deny the motion.

Mr. Harris: May I re-open, as to one matter?

Mr. Rosenquest: No objection.

Mr. Harris: I offer in evidence State's Exhibit G, which is a certified transcript from the Clerk of this Court of a prior conviction of this defendant for practicing dentistry in the city of Minneapolis.

Mr. Rosenquest: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Harris: State rests.

[fol. 29] Mr. Rosenquest: I will waive my opening statement.

Dr. J. T. Carpenter, sworn on behalf of the defendant, testified:

By Mr. Rosenquest:

Q. Doctor, your full name is J. T. Carpenter?

A. Yes sir.

Q. You are a duly registered and licensed dentist in the state of Minnesota?

A. I am.

Q. Engaged in the practice of dentistry at the present time?

A. I am.

Q. How long have you been duly licensed and registered as a dentist?

A. Twenty-five years.

Q. Do you know Dr. C. H. Graves, the defendant in this action?

A. I do.

Q. How long have you known him?

A. Oh, over twenty years, possibly 22 or 23 years.

Q. Has any of the dental work which he has ever done come under your observation?

A. It has.

Q. Have you had considerable opportunity to observe the dental work which he has done?

A. I have seen quite a bit of it.

Q. As a dentist I would like to have you give us your [fol. 30] opinion of his dental work,—of the dental work which Dr. Graves has done, which has come under your observation.

Mr. Harris: Objected to as incompetent, irrelevant and immaterial, not bearing upon any of the issues in this case.

The Court: Sustained.

Q. Has Dr. Graves ever done any dental work for you personally?

A. He has.

Q. What has he done?

Mr. Harris: Objected to on the same grounds.

The Court: Sustained.

Mr. Rosenquest: We offer to prove by this witness that he has had a wide and varied opportunity to observe the dental work which Dr. C. H. Graves, the defendant in this action, has done, and that the defendant in this action has also done a great deal of dental work for the witness personally, consisting of several crowns, bridge work, extractions, treating and filling of numerous teeth; that the work which the witness has had occasion to observe, and which work has been performed by the defendant, has consisted of bridge work, plate work, extractions, crowns, fillings, inlays, and all other dental work which a dentist in the course of a long practice has occasion to perform; that in his opinion, as a licensed and registered dentist, of wide experience, the said work of Dr. Graves is exceptionally good in character, that it is first class in every respect, and is equally as good as the best work done by any other dentist in the state.

[fol. 31] Mr. Harris: I object to the offer, on the ground that it is incompetent, irrelevant and immaterial, not bearing on any of the issues in this case.

The Court: Sustained upon the ground that it is irrelevant, and does not bear upon any issue in the case.

Mr. Rosenquest: That is all, doctor.

Mr. Harris: No cross-examination.

Fred Stinson, sworn on behalf of the defendant, testified:

By Mr. Rosenquest:

Q. Mr. Stinson, your full name is Fred Stinson?
A. Yes sir.
Q. You reside in the city of Minneapolis?
A. Yes sir.
Q. Are you acquainted with the defendant, Dr. Graves?
A. Yes sir.
Q. How long have you known him?
A. Eight years, I think.
Q. Have you ever been a patient of his?
A. Yes.
Q. Has he done dental work for you?
A. Yes sir.
Q. What dental work has he done?

Mr. Harris: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

[fol. 32] Mr. Rosenquest: We offer to prove by this witness that he has been a patient of Dr. Graves for the last eight years; that during that period Dr. Graves has treated this witness and all members of his family, performed for them all the dental work which has been necessary for them to have done, during this period Dr. Graves has placed bridge work, crowns, fillings, performed extractions and treated teeth for this witness and his wife; that this witness has had considerable dental work done by three other dentists, who are registered and licensed; that the work done by Dr. Graves for him and his family is far superior to the work done for him by any other dentist, in that the work done by Dr. Graves looks better in his mouth, feels better, and gives better satisfaction, lasts longer and does

not have to be replaced; that he now has work in his mouth placed there by Dr. Graves which has been there for the last seven years, which work has given entire satisfaction.

Mr. Harris: Objected to on the ground that it is incompentent, irrelevant and immaterial, and not bearing upon any issues in this case, and upon the further ground there is no foundation laid.

The Court: Sustained upon the ground that it is irrelecant, not within the issues in this case.

Mr. Rosenquest: I understand that there is to be an exception to all the rulings?

The Court: Yes.

Mr. Harris: No questions.

[fol. 33] Hugh J. McGrath, sworn on behalf of the defendant, testified:

By Mr. Rosenquest:

Q. Your full name is Hugh J. McGrath?
A. Yes.
Q. Where do you live?
A. 3015 Humboldt Avenue South.
Q. How long have you lived in Minneapolis?
A. Oh, thirty-five years.
Q. What is your business?
A. I have been in the investment business, real estate, building.
Q. Do you know Dr. Graves, the defendant here?
A. Yes.
Q. How long have you known him?
A. About thirty years.
Q. Where did you first become acquainted with him?
A. Fond du Lac, Wisconsin.
Q. What was he doing there?
A. In the dentist business.
Q. He was practicing dentistry there?
A. First with Dr. Dickinson, and after with Dr. Sackett.
Q. Who was——
A. A dentist at Fond du Lac.

Q. What was his reputation?
A. Fine, very fine.

Mr. Harris: I move to strike the answer out on the [fol. 34] ground that it is incompetent, irrelevant and immaterial.
The Court: Stricken.

Q. Has Dr. Graves ever done dental work for you?
A. Yes sir.

Colloquy Between Court and Counsel

Mr. Harris: Objected to as incompetent, irrelevant and immaterial.
The Court: Consider that objection made before the answer, if there is an answer.
Mr. Harris: I move the answer be stricken, on that ground.
The Court: The answer may be stricken. Don't answer so quickly.

Mr. Rosenquest: I want to make another offer of proof by this witness. We offer to prove by this witness that he has had dental work done by the defendant continuously for the last fifteen years; that this dental work consists of crowns, fillings, extractions, treating numerous teeth; that he has also had dental work of the same kind by at least six other dentists who were registered and licensed to practice dentistry; that the work done by Dr. Graves is far superior in every way to the work done by any other dentist; that the work done by Dr. Graves looks better in his mouth, feels better, and gives better satisfaction, and last longer than the dental work done by any other dentist; that the time he first knew Dr. Graves he was practicing and studying under Dr. Sackett, in Fond du Lac, Wisconsin; that Dr. Sackett was known as a first class dentist, and one [fol. 35] of the best dentists in the city; that this witness now has dental work in his mouth which was placed there as long ago as ten years by Dr. Graves, and that it has always been perfectly satisfactory, and has never given him any trouble; that his experience with other dentists, who are licensed to practice, has been very unsatisfactory; that

he has gone to other dentists who have practiced for many years, and who are licensed to so practice.

Mr. Harris: I object to the offer on the ground that it is incompetent, irrelevant and immaterial, it has no bearing on the issues in this case, and for the further ground that no proper foundation has been laid.

The Court: Same ruling.

Mr. Rosenquest: The defendant having a large number of witnesses to call for the purpose of showing that the defendant is a competent and qualified dentist, and for the purpose of saving time, it is hereby stipulated that the calling and swearing of these witnesses may be waived, and an offer to prove on the part of the defendant, on the part of each one of these witnesses, may be made, and the State waives any and all rights it may have by reason of the failure to call and swear the witnesses. The following offers of proof may be considered to be made in due form.

We offer to call H. H. Johnson, who has lived in Minneapolis for the last fifty years, and who is now retired; he [fol. 36] has attended dental college of the University of Minnesota, and that for thirty years he owned and operated a mechanical dental laboratory in which he made plates and other mechanical work for a good share of the licensed dentists in the city of Minneapolis; that the witness has known the defendant for the last twenty years, and that during that period the defendant has done all the dental work for himself and his family; that he and his family have had a great deal of work done by other dentists, have gone to five or six other dentists who were considered highly efficient; that by reason of the experience of the witness, he understands particularly mechanical dentistry thoroughly, that he himself has made a good many upper plates for himself, and that he has also had several upper plates made by other dentists, none of which he was able to wear; that Dr. Craves made a full upper plate for him five years ago, and that it is the best upper plate he has ever had; that he has worn it constantly for the last five years, and that it is still good and giving him perfect satisfaction; that the witness knows most of the other dentists in the town and has become familiar with a good deal of their work,

and that in his opinion, gained from study of dentistry at the University of Minnesota, and from owning and operating a mechanical dental laboratory for over thirty years, he considers the work done by Dr. Graves to be just as good and scientifically done and satisfactory as the best work done by any licensed dentist. Dr. Graves has had to replace a lot of work done for him and his wife by other [fol. 37] dentists; that he now has work in his mouth, other than the upper plate refered to, which has been there for the last ten years.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: We offer to call as a witness for the defendant E. C. Teschandorf, and to prove by this witness that he has resided in Minneapolis the last thirteen years. Prior to that time he lived in Fond du Lac, Wisconsin, for twenty years; that he has known the defendant, Dr. Graves, for the last thirty or thirty-five years; that at the time he first became acquainted with Dr. Graves, he was studying dentistry under Dr. Sackett, a duly licensed dentist under the laws of the state of Wisconsin, residing and practicing in Fond du Lac. Dr. Sackett was known as a high class dentist, and one of the best in the state, that the defendant has done dental work for the witness and his family the last fifteen years; that said work for the witness consists of three bridges, four crowns, numerous fillings, and extractions; that the witness has had dental work done by many other dentists, who are licensed to practice, and that the work done by Dr. Graves is just as good or better than any dental work he has ever had done by anyone else; that Dr. Graves has placed bridges in his mouth which have been continuously there for the last twelve years, and have given uniform satisfaction; prior to that time he was unable to wear a bridge for more than two years, before it would [fol. 38] wear out and had to be replaced; that the work done by Dr. Graves looks better in his mouth, lasts longer, feels better than most of the dental work he has ever had done; that Dr. Graves worked for the wife of this witness thirty years ago in Fond du Lac, Wisconsin, and that the witness's wife has dental work consisting of crowns, fillings,

which have been in her mouth as placed there by Dr. Graves, for over thirty years, and said work has always been satisfactory and is still so.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to call the witness Winthrop Schribner. We offer to prove by this witness that he has known Dr. Graves for the last twenty-five years, twenty-five or thirty years, having known him when he was practicing dentistry in Fond du Lac; that Dr. Graves had as his patients in Fond du Lac the best class of people there; that Dr. Graves was considered one of the best dentists in the city; that Dr. Graves has always done the work for the witness and all members of his family; that his wife and the witness have bridge work in their mouths which Dr. Graves placed there nearly thirty years ago, and that said bridge work is still good and absolutely in perfect condition, and has always been very satisfactory; that Dr. Graves has placed crowns, bridge work in the mouth of this witness, and that some of the work has been there for as long as twenty years; that Dr. Graves has done bridge work, crowned teeth, and filled teeth for this witness, and that he has had the same class of work done by several other [fol. 39] dentists who were licensed, and the work done by Dr. Graves has been more uniformly satisfactory than any work done for him or his family by any other dentist.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: An exception.

Mr. Rosenquest: Offer to prove by the witness W. H. Russ, that he has known Dr. Graves for the last 17 years, and that Dr. Graves has done all his work for him for the last 15 years; that said dental work consists of a full upper plate and a partial lower plate; also several crowns and fillings; and that he has also had a great deal of dental work done by a large number of other dentists who were licensed, and that the work done by Dr. Graves is more satsfactory than any other dental work he ever had done; Dr. Graves can do more work and better work in less time than any

dentist he has known of; that he has never had any trouble with the work Dr. Graves has done for him, while the work which other dentists have done for him has not lasted very long, and has always had to be replaced within a few years; that the witness knows a large number of men who come here from time to time from Chicago, and that these men always defer having their teeth filled until they can come to Minneapolis, for the reason that they consider Dr. Graves a better dentist than any other dentist they have gone to; that the wife of this witness has had her dental work done [fol. 40] exclusively by Dr. Graves during the last fifteen years, and that her experience has been the same as that of this witness.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: We offer to prove by the witness J. H. Lockwood that with the exception of two or three winters, which he has spent in California or Florida, he has spent nearly every winter in Minneapolis during the past 18 years; that Dr. Graves has done dental work for him during the last ten years, and also for his wife during the same period; that this work consisted of bridge work, extractions, crowning and filling and treating teeth for pyorrhea; that the witness and his wife have dental work in their mouths now placed there by Dr. Graves as long as ten years ago, that the same is always and has been entirely satisfactory; that the witness and his wife have had a great deal of dental work done by other dentists and that the work done by Dr. Graves is fully as good and satisfactory as the best dental work ever done for them by any other dentist.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness P. H. Eichelzer that he is an attorney duly licensed to practice as such in the state of Minnesota; that he has lived in Minneapolis all his life, with the exception of five years; [fol. 41] that Dr. Graves has done all his dental work for the last ten years; that during that time Dr. Graves has

crowned six or seven of his teeth, has placed bridge work in his mouth, has extracted one or two teeth, and filled many of his teeth; that all of this work has proven highly satisfactory; that he has been to three or four other licensed dentists in Minneapolis, and has had the same character of work done by them; that in his opinion Dr. Graves is the best dentist he has ever been to; that in 1922 Dr. Graves cured an abscessed tooth for him, which a licensed dentist in Minnesota couldn't cure and pronounced incurable; that he went to this other dentist during the temporary absence of Dr. Graves from the city; that this dentist advised him the tooth would have to be extracted, after having treated it for months; Dr. Graves returned about that time, and cured and crowned this tooth, and it has never troubled him since. The work done by Dr. Graves looks better, feels better, and lasts longer than any dental work ever done for him by anybody else.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness J. B. Slagle that he has been a patient of Dr. Graves for the last 16 years, and during that time Dr. Graves has put two bridges in his mouth, placed fillings, and a full upper plate there, and performed numerous extractions, and done con- [fol. 42] siderable filling and crown work for him; that the witness has had three different upper plates made by licensed dentists; none of which plates were satisfactory, and had to be discarded after a year or two of use; that he has an upper plate in his mouth that Dr. Graves placed there many years ago, and that this plate is still as serviceable and satisfactory as it ever was, and has always been very satisfactory.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness Mrs. J. B. Slagle that she had two or three bridges in her mouth and several crowns made by Dr. Graves, that she has gone to other licensed dentists in Minneapolis, and that her ex-

perience with them has been very unsatisfactory; that the work done by Dr. Graves has been much more satisfactory than any work she has ever had done by any other dentist, and that she has bridges and crowns in her mouth now plaged there by Dr. Graves fourteen years ago, which are entirely satisfactory.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness Mrs. Mary A. McLeod that she resides at 4508 Zenith Avenue South, Minneapolis; that she has known Dr. Graves and been his patient for the last fifteen years, and that he has [fol. 43] also done work for her son and other members of the family; Dr. Graves has made an upper plate for her, also made several bridges, and performed numerous extractions, and placed several crowns and fillings in her mouth; that the witness came here from Niagara Falls, New York, where she had a dentist reputed to be the best dentist in town; that he did considerable bridge work for her that was defective and had to be replaced after a short time; that Dr. Graves replaced this bridge work shortly after she knew him, and it has been in her mouth ever since, and perfectly satisfactory, and never bothered her in any way; that in her opinion Dr. Graves' work is far superior to that of any other dentist she has ever been to, and that all the work he has ever placed there has never worn our or proven unsatisfactory; she has been to other dentists in Niagara Falls, also several in Buffalo, New York, licensed to practice in New York.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: An exception.

Mr. Rosenquest: Offer to prove by the witness J. L. Menard that he has lived in Minneapolis for the last fifty years; that Dr. Graves has made a plate for his wife, and that he has also done numerous other dental work for his two daughters; eight years ago the witness was suffering from pyorrhea, at which time he went to three or four dentists in Minneapolis for the purpose of obtaining relief;

that all these dentists advised him that his condition was [fol. 44] such that it was incurable and that he would have to have all his teeth taken out; that while he wears a plate, he still has all the other teeth which Dr. Graves treated and saved for him; that Dr. Graves' work is more satisfactory than any dental work ever done for him or for any other member of his family by any other dentist.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: An exception.

Mr. Rosenquest: Offer to prove by the witness B. L. Young that he resides at 3720 Fourth Avenue South, in the city of Minneapolis and that he is city salesman for the Crocker chair company, that he has known Dr. Graves for the last seven or eight years; that Dr. Graves made a one piece upper plate for him, which is the most remarkable piece of workmanship he has ever seen; that prior to that time he went to a large number of other dentists and had numerous plates built for him, all of which were unsatisfactory and proved useless after a short period of time; that the plate built for him by Dr. Graves has been in his mouth now for about five years and feels just as comfortable as his own natural teeth did; that in his opinion the work done by Dr. Graves is far superior to that done by any other dentist he has ever gone to; that he feels he gets a better job, that the work looks better, and feels better in his mouth than it did when he went to another dentist, and that he never has any trouble with the work which Dr. Graves has done; Dr. Graves has done also all the work for [fol. 45] his wife and daughters for several years.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: An exception.

Mr. Rosenquest: Offer to prove by the witness W. E. Turner that he is a salesman for the Curt-Trech Company of Chicago, Illinois; that he has been a dental patient of the defendant for the last five years; that during that period the defendant has done a great deal of dental work for him, consisting of bridge work, crowning, filling and extracting teeth; that he has had a great deal of dental

work done by other licensed dentists, and that the work done by Dr. Graves is superior in every way to the work done for him by anyone else, in that the work done by Dr. Graves feels much more comfortable in his mouth, and wears and lasts much longer; at the present time he is wearing a bridge which Dr. Graves made and placed in his mouth five years ago, and that this bridge has always been and still is perfectly satisfactory.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness C. H. Naegele that he resides at 1211 West Minnehaha Parkway, city of Minneapolis; that he has known Dr. Graves for the [fol. 46] last fifteen years; Dr. Graves has worked for him and for his wife and other members of his family all that time; that Dr. Graves has placed a bridge, several crowns and fillings and performed several extractions in his mouth; Dr. Graves also made an upper plate for his wife several years ago; that he has had experience with five or six other licensed dentists, and that the work done by Dr. Graves in his opinion is much better than the work done by other dentists, and gives the witness much greater satisfaction than any other dental work he has ever had done; that he has lived in Minneapolis with his family for the last fifteen years; that the upper plate made for his wife by Dr. Graves has been in her mouth a great many years and is perfectly satisfactory. Prior to that time she had two or three other plates made by other dentists, which plates she couldn't wear or keep in her mouth.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness Mrs. Mary B. Donaldson that she resides at 1420 Madison Street Northeast, in the city of Minneapolis; that she has lived in Minneapolis for the last fifteen years; that Dr. Graves has done all of her dental work for the last fifteen years; that said dental work consists in gold inlay fillings, several porcelain fillings, bridge work, certain extractions; that

[fol. 47] Dr. Graves has also made for her a full upper plate. Prior to living in Minneapolis the witness lived in Sioux City, Iowa, Indianapolis, Indiana, and Chicago, Illinois; that she has had dental work done in each of those cities, by duly registered and licensed dentists, residing therein; that the dental work done by these dentists has been of the same general description as the work done by Dr. Graves; that Dr. Graves' work in her opinion is better looking and more workmanlike than that done by any other dentist she has ever gone to; that the work done by Dr. Graves has been more satisfactory to her and has lasted longer, felt better in her mouth than any other dental work she has had done; that the upper plate she is now wearing was made for her by Dr. Graves ten years ago, and that this plate has always been and still is perfectly satisfactory. Prior to wearing the plate she now has, she had two or three other plates made by other dentists, neither of which plates she was able to wear, because they did not fit her mouth, and she could not eat with them.

Mr. Harris: Objected to on the same grounds.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness R. M. Skinner that he resides at 3261 West Broadway, in the city of Minneapolis, and has lived in Minneapolis the last sixteen years; that he is the owner of the Corona typewriter agency in Minneapolis; that he has known Dr. Graves for the last fifteen years; and that Dr. Graves has always done during that period all the dental work for himself and his [fol. 48] family; that his dental — consists of three crowns, two bridges and numerous fillings in the mouth of the witness; that the witness has had dental work of the same general description done for him by dentists in Chicago, New York and Omaha; that the dentists in these cities were duly registered and licensed to practice under the laws of their respective states; that some of the work done by these dentists has not been satisfactory, has had to be replaced, did not look well, or feel well in his mouth, and that the work which Dr. Graves has done for the witness and his family has always been uniformly satisfactory, none of it

has ever had to be replaced, and in the opinion of the witness the work done by Dr. Graves is as good as the best dental work he has ever had done by any other dentist.

Mr. Harris: Same objection.
The Court: Same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: We offer to prove by the witness Mrs. M. A. Drew that she resides at the Leamington Hotel, city of Minneapolis; that she has known Dr. Graves for the last ten years, and that he has done all her dental work during that period; that Dr. Graves has made and placed in her mouth four crowns, and two bridges, besides doing considerable operative dentistry and filling a large number of her teeth; that prior to going to Dr. Graves, the witness had as her dentist Dr. Engle, who formerly lived in Minneapolis and was known as one of the best dentists there; that Dr. Engle is now engaged in the practice of dentistry, as a specialist, in New York City; that Dr. Engle did work for [fol. 49] the witness of the same general description as the work done by Dr. Graves, and the work done by Dr. Graves is just as satisfactory in every respect as the work done for her by Dr. Engle; that the witness has bridge work, crowns, and fillings in her mouth now which were placed there over seven to ten years ago by Dr. Graves, and that this work is perfectly satisfactory and has always been so.

Mr. Harris: Objected to on the same grounds.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness C. O. Gibson that he resides in the city of Minneapolis, at 4322 Wentworth Avenue South, and has lived in Minneapolis all his life; that Dr. Graves has done all the dental work for the witness and the witness' father and mother for the last thirteen years; that this dental work consists of three crowns, one bridge, and numerous fillings and extractions; that the witness has gone to four or five licensed dentists in the city of Minneapolis, who have done work for him of the same general description as the work done for him by Dr. Graves; that the work done for him by Dr. Graves is more satisfactory in all respects than any dental work he

has had done by anyone else; that it looks better, feels better in his mouth, more comfortable, than any other work he has ever had done; that at the present time he has crowns and bridge work in his mouth which were,—which are giving him perfect satisfaction and have been in place in his mouth for a period of ten years, which work was done for him by Dr. Graves; Dr. Graves has also made a [fol. 50] full upper plate for both the father and mother of the witness, and these plates have been and still are perfectly satisfactory, and have been in use for a period of eight years; that his father and mother have plates made by other dentists, which they were unable to wear, because they did not fit their mouths, and caused them pain.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness B. L. Brown, that he has known Dr. Graves and been a patient of his for the last eight years; that during that time Dr. Graves has done all his dental work, consisting of two crowns, one bridge, gold and porcelain fillings; that the witness has had work done for him by licensed dentists in the city of Cleveland, and New York; that said dental work is of the same general description as the work done for him by Dr. Graves; that the work done for him by Dr. Graves is just as satisfactory as the best work he has ever had done by any other dentist.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness W. B. Smith that he is a salesman for the Durkee Atwood Company of this city, that he has known Dr. Graves for the last ten years, and during that period Dr. Graves has done all the dental work for himself and family; that this dental [fol. 51] work consists of three bridges, several crowns, numerous extractions, and a number of gold and porcelain fillings; that the witness has also had dental work done in Mason City, Iowa, Portland, Oregon, and several other places, by duly licensed and registered dentists; that this

dental work has been of the same general character as the work done for him by Dr. Graves; that in many instances the work done by dentists other than Dr. Graves has been unsatisfactory, and that it would not stay in place in his mouth, and did not look well or feel well; that he has at the present time bridge work and other dental work in his mouth placed there by Dr. Graves at the time Dr. Graves first worked for him, and that this work is still satisfactory and always has been satisfactory; that in the opinion of the witness the work done by Dr. Graves is better than any other dental work he ever had done, and that he has had work done by many dentists; that the said work done by Dr. Graves is done in a scientific and workmanlike manner.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness Mrs. Mabel Rice that she has known and been a patient of Dr. Graves for the last fifteen years; that during this period Dr. Graves has made a partial upper plate for her, put in considerable bridge work in her lower jaw, extracted several teeth, and filled and crowned several others; that the witness has gone to four other licensed dentists in the city of Minneapolis, who have done for her work of the same general description; that in most cases the work done [fol. 52] for her by other dentists has been unsatisfactory and has had to be replaced, for the reason that it would not stay in her mouth; that she has bridge work and crowns in her mouth and a partial plate which Dr. Graves made for her and placed in her mouth fifteen years ago, that this work has never had to be touched since, and has always been very satisfactory; that in her opinion the work done by Dr. Graves is far superior to any other dental work she has ever had done; that Dr. Graves also made a full upper plate for her grandmother twelve years ago; that prior to that time her grandmother had several other plates made for her by other and licensed dentists, and that she could never wear these plates; that she is still wearing the plate which Dr. Graves made for her, and that it is exceedingly satisfactory.

Mr. Harris: Same objection.

The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness Jesse Flavin that he has lived in Minneapolis all his life, and is the owner of several large family apartment buildings; that he has known Dr. Graves for the last ten years, during which period Dr. Graves has done all the dental work for himself and his family; that Dr. Graves has crowned several of the witness' teeth, extracted several othrs, and filled several others with gold and porcelain fillings; Dr. Graves also made a four tooth bridge for the witness several years ago; that prior to that time the witness went to several other licensed dentists in the city of Minneapolis who did dental work for him of the same general descrip-[fol. 53] tion, and that he has never had any trouble with the work done for him by Dr. Graves, and he has had trouble with some of the work done for him by other dentists; that the work done for him by Dr. Graves is perfectly satisfactory, and in his opinion is better than the dental work done for him by any other dentist.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness C. W. Skelton that he has known Dr. Graves for the last five years, and during that time Dr. Graves has done all of his dental work for the witness and his family; Dr. Graves has made a partial plate for the witness and also two bridges and crowned and filled several others; that the witness has had a great deal of dental work done and has gone to dozens of other licensed dentists; that he has never had dental work done that is so satisfactory, and he has been to many other dentists; none of them have done such good and serviceable work for him as Dr. Graves; that Dr. Graves at one time extracted eight teeth for him without breaking off any roots and with the mouth healing up quickly afterwards; that other dentists in extracting teeth have in two instances broken off roots; that the work done for the witness by Dr. Graves is better than most of the other dental work which he has ever had done by anyone else.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness J. J. [fol. 54] Daugherty that he has known Dr. Graves for the last twelve years, during which time Dr. Graves has done all of his dental work for the witness and his family, as well as most of his friends and relatives; that Dr. Graves has made a partial lower plate for the witness, and crowned and filled numerous of his teeth; that Dr. Graves has also made a full upper plate for the wife of the witness, which upper plate has been in Mrs. Daugherty's mouth for twelve years, during which time it has been and still is perfectly satisfactory; that the witness has gone to five or six other licensed dentists who have done work for him, work of the same general character as that done by Dr. Graves, and that in the opinion of the witness the work done for him and his family by Dr. Graves is equal to the best dental work they have ever had done by any other dentist.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness Irene Rerat that she has known and been a dental patient of Mr. Graves for the last nine years that; during this period he has done all of her dental work, which has consisted of a partial upper plate, two bridges, numerous gold and porcelain fillings, and extractions; that prior to going to Dr. Graves she had been to three other licensed dentists in the city of Minneapolis; that these other licensed dentists have done work for her of the same general description; [fol. 55] that Dr. Graves in his opinion has done far better dental work for her than any other dentist she has ever gone to; that she is wearing a partial plate and a bridge which Dr. Graves placed in her mouth when she first went to him, and that this work is still perfectly satisfactory; prior to that time she had two other partial plates made for her by other dentists, which she was unable to wear, because the plates did not fit her mouth properly.

Mr. Harris: Same objection.

The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: Offer to prove by the witness R. B. Wagner that he has known and been a patient of Dr. Graves for the last fifteen years: that during this period Dr. Graves has done all the dental work for the witness and his family; that Dr. Graves during this period has placed two bridges, several crowns, in the mouth of the witness, besides filling and extracting several teeth; that the witness has gone to two or three licensed dentists in the city of Minneapolis, but that the work done by these dentists was not satisfactory, and that it would not last or stay in his mouth for any length of time; that the work done by Dr. Graves is in his opinion far superior to any dental work he has ever had done by anyone else; that the witness is now wearing a bridge and two crowns which Dr. Graves made for him and placed in his mouth twelve years ago, and that this work is still in his mouth and has always been highly satisfactory.

[fol. 56] Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: I have sixteen other witnesses here in court ready to testify at the present time regarding the matter by whom I can make substantially the same offers to prove as heretofore made, with reference to Dr. Graves' competency and qualifications as a dentist. These sixteen other witnesses have all been patients of his over a long period of years, for whom he has done dental work of every nature. All of these witnesses have also had considerable experience with other duly registered and licensed dentists, and their testimony will be substantially the same as the previous witnesses.

Mr. Harris: The same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

Mr. Rosenquest: I might add that I could take up weeks of the Court's time reading into the record this kind of testimony, but for the purpose of shortening the record and

not encumbering it with testimony which the Court has ruled inadmissible, we will stop with the foregoing offers.

Charles H. Graves, sworn in his own behalf, testified:

By Mr. Rosenquest:

Q. Doctor, your full name is Charles H. Graves?
A. Yes, sir.
[fol. 57] Q. You are the defendant in this action?
A. Yes, sir.
Q. Where do you live, Doctor?
A. 211 West 15th Street.
Q. How old are you?
A. Fifty.
Q. How long have you lived in Minneapolis?
A. I came here in 1909.
Q. What is your business?
A. Dentistry.
Q. How long have you been practicing dentistry?
A. Ever since I was fourteen.

Mr. Harris: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer——

The Witness: I went into a dental office to learn the business.

Q. Tell us how you began to practice dentistry.

Mr. Harris: That is objected to as incompetent, irrelevant, immaterial, having no bearing on the issues in his case.

The Court: Sustained.

Mr. Rosenquest: We offer to prove by this witness that he went into a dental office in the state of Wisconsin, city of Fond du Lac, as an apprentice, when he was fourteen years old, with a doctor by the name of Dr. C. E. Dickinson, [fol. 58] a duly licensed and dentist under the laws of the state of Wisconsin; that he was with Dr. Dickinson for about two years, when Dr. Dickinson died; that Dr. Dickinson was known as one of the best dentists in the state of

Wisconsin; that the witness then went into the office of Dr. H. T. Sackett, a duly licensed and registered dentist under the laws of the state of Wisconsin, and worked for him for about seven years, where he studied dentistry under the personal supervision of Dr. Sackett; that the witness then went to Chicago and entered the Northwestern Dental College, which he attended for nearly two years, during that time he also worked in the various dentists' offices during his spare time; that after two years' schooling, he went to work for Dr. Haycock, a duly licensed dentist in the state of Illinois, having an office at the corner of State and Adams Streets in the City of Chicago; that he worked for Dr. Haycock six or eight months; that the witness came to Minneapolis in 1900, and went to work for Drs. Rexford and McGuirk, both of whom were duly licensed and registered dentists under the laws of the state of Minnesota; that the witness worked with these two dentists for a short time, and then went to work for Dr. Lennox, a duly registered and licensed dentist under the laws of the state of Minnesota; that the witness did work for Dr. Lennox and Dr. Lennox's wife personally, before Dr. Lennox hired him; that this work consisted of certain bridge work, plate work, and considerable operative dentistry; that the witness was with Dr. Lennox for one and a half or two years, and he then opened his own office somewhere between 1902 [fol. 59] and 1905. During the time he was studying dentistry in Wisconsin and in Chicago, as an apprentice, he also studied all the theoretical books on the subject as recommended to him by the doctors under whose supervision he was learning dentistry; that the witness has offered to take the examination prescribed by the Minnesota State Board of Dental Examiners, and has applied for the examination so that he might become a licensed dentist under the laws of the state of Minnesota. The State Board of Dental Examiners has refused to give him this examination, on the ground that he has no diploma from an accredited dental college. The witness has studied histology, pathology, materia medica, therapeutics, and all other sciences pertaining to the theoretical practice of operative dentistry. He has kept constantly up to date with the advance of the science of dentistry and subscribes

to all the professional dental magazines. The witness does not hold himself out as a doctor, has never advertised as such, has never used the work "Doctor", or the word "Dentist" on his office door, or is he or has he ever been listed as a doctor or dentist in the directory on the first floor of the building in which he has his office; that he has a large practice and that he has anywhere from fifteen to thirty patients each day; that he has hundreds of patients coming to him now for dental work who have been his patients and for whom he has done dental work over a course of a great many years. The defendant is willing to take the examination prescribed by the State Board of Dental Examiners, and has offered to take it; that he has [fol. 60] also offered to take up special work at the University of Minnesota for the purpose of enabling him to become a licensed dentist, but that the authorities there have refused to give him any courses or permit him to take any courses unless he enrolls as a regular student devoting his whole time to the study; that he has gone to the members of the State Board of Dental Examiners of the state of Minnesota on numerous occasions and has tried to have them indicate to him some method whereby he might become a licensed dentist; that they have uniformly refused to talk to him, and have stated that they would do nothing for him, and that on the contrary, they would put him out of business; that he at one time was advised that the law governing licensed dentists in the state of Minnesota was unconstitutional; that this was shortly after he came to Minnesota and engaged in the practice here. That he has at all times tried to comply with the law; that he is a married man and has a family to support.

Mr. Harris: Objected to on the ground that it is incompetent, irrelevant and immaterial, not bearing upon any issues in this case.

The Court: Sustained upon the same two grounds.

Mr. Rosenquest: Exception.

Mr. Harris: No cross-examination.

Dr. Howard S. Feeney, sworn on behalf of the defendant, testified:

By Mr. Rosenquest:

Mr. Rosenquest: We offer to prove by the witness Dr. [fol. 61] Howard S. Feeney, who is now on the witness stand, that he is a dentist duly licensed to practice as such in the state of Minnesota; that he has been duly licensed to practice dentistry in the state of Minnesota since 1917, and ever since then has been engaged in active practice of dentistry; that he has known Dr. C. H. Graves, the defendant in this action, and that on a great many occasions he has seen and observed the work which Dr. Graves has placed in the mouths of various patients; that this work consists of dental work in all its branches, and that in his opinion as a licensed dentist the work done by Dr. Graves is exceptional; he has seen several patients who have in their mouths bridge work and other kinds of dental work which has been in place during the last fourteen years, and this work is skillfully done, and done in a workmanlike and scientific manner, according to the best dental practice.

Mr. Harris: Same objection.
The Court: The same ruling.
Mr. Rosenquest: Exception.

(Court then adjourned until January 12, 1926.)

Morning Session

Pursuant to adjournment.

Mr. Rosenquest: The defendant will waive his closing argument.

Mr. Harris: The State will have just a few words to say.

The attorney for the State then summed up the case to [fol. 62] the jury, after which the Court instructed as follows:

Charge to the Jury

Ladies and gentlemen of the jury, the laws of this state provide for the appointment of a Board of Dental Examiners by the Governor of the State, to consist of six

practicing dentists; it further provides that a person not already a registered dentist of the state who desires to practice dentistry herein may apply to the secretary of the board for examination and pay a fee of twenty dollars therefor; that at the next regular meeting of the board such applicant shall present himself for examination and shall produce his diploma from some dental college of good standing, and also satisfactory evidence to show the applicant to be of good moral character; that the board shall be the judge of the standing of such dental college, and that the board shall give the applicant such an elementary and practical examination as to thoroughly test his fitness for the practice of dentistry, and shall include in such examination the subject of anatomy, physiology, chemistry, materia medica, therapeutics, metallurgy, histology, pathology, operative and surgical and mechanical dentistry; and the applicant shall be required to demonstrate his skill in operative and in mechanical dentistry. The statutes further provide that if the applicant successfully pass the examination, he shall be registered by the board as a licensed dentist, and supplied with the certificate of registration signed by all the members of the board of Dental Examiners of this state; and that no person shall practice [fol. 63] dentistry in this state without having complied with these provisions of the statute. The statutes further provide that a person shall be said to be practicing dentistry, within the meaning of the statute, who shall, for a fee, salary, or other reward paid or to be paid either to himself or any other person, perform dental operations of any kind, treat diseases or lesions of the human jaws or teeth, or replace lost teeth by artificial ones or attempt to correct malposition thereof.

The wisdom of these statutes isn't a matter for the consideration of this Court or the jury. That matter has, by law, been confided to the legislature of the state.

The State charges in this case that on the 29th day of November, 1925, Charles H. Graves, within the city of Minneapolis, county of Hennepin, state of Minnesota, did wilfully, unlawfully and wrongfully practice dentistry, and did perform dental operations, and in particular did diagnose, treat, cut, drill, and crown a certain tooth in the mouth of Harriet Young, a human being, for a fee and

reward of sixteen dollars paid to the said Charles H. Graves, the said Charles H. Graves not having at the time been registered by the Board of Dental Examiners of the state of Minnesota as a licensed dentist, and not having at the time a certificate of registration as a registered and licensed dentist in the state of Minnesota, and not having at the time a license to practice dentistry in the state of Minnesota. That is the charge.

If from the evidence in the case you find that the defendant did on or about the date mentioned diagnose, treat, [fol. 64] cut, drill and crown a tooth in the mouth of Harriet Young; that he then and there or thereabouts did so treat, cut, drill and crown a tooth in her mouth that would constitute the practice of dentistry, within the meaning of these statutes. Before you may find the defendant guilty on this charge, you must find from the evidence in the case, beyond a reasonable doubt, that each of these facts exists,—first, that the defendant performed a dental operation upon Harriet Young, within the definition thereof heretofore given; second, that Harriet Young paid the defendant a fee therefor; and third, that the defendant did not have a license from the Board of Dental Examiners of this state to practice dentistry in this state; fourth, that the performance of such dental operation, if such you find, was within the county of Hennepin, and within the state of Minnesota, and was on or about the 29th day of November, 1925. It is not necessary to show that it all took place on the same date. If the state fails to prove all or any one of these four things, beyond a reasonable doubt, it is your duty to acquit the defendant. If it proves all of them, beyond a reasonable doubt, it is your duty to convict the defendant.

The defendant is accused of an offense of which he is presumed to be innocent until his guilt is proven beyond a reasonable doubt. The assumption of innocence attends him throughout the case, until after a consideration of all the evidence you are satisfied, beyond a reasonable doubt, of his guilt. The mere fact that the defendant is here on [fol. 65] trial and that he has been brought into court by the ordinary criminal processes, should not be considered by you as in any way eliminating the presumption of innocence in his behalf. The presumption may be elimi-

nated or raised only by evidence produced here in court by the state.

The law requires that before you may find the defendant guilty, the evidence must establish his guilt beyond a reasonable doubt. Mere suspicion of guilt, however strong, or a preponderance of the evidence in the case against the defendant, will not do upon which to pass a verdict of guilty. The doubt which the juror is allowed to retain in his own mind, and under which he should render his verdict of not guilty, if he so render it, must always be a reasonable doubt. A doubt produced by undue sensibility in the mind of the juror in view of the consequences of the verdict, is not a reasonable doubt. A reasonable doubt or proof beyond a reasonable doubt is such as would impress the judgment of an ordinarily prudent man or woman with a conviction upon which he would act, without hesitation, in his or her most important affairs or concerns of life.

You are the sole and exclusive judges of the truthfulness of the witnesses and of the weight to be given to their testimony. In judging of the credibility of witnesses, you may take into consideration their interest or lack of interest in the outcome of the action, their relation, if any, to the parties to the action, their appearance and demeanor while on the witness stand, their candor or lack of candor in [fols. 66 & 67] testifying, the reasonableness or unreasonableness of their testimony.

The clerk has prepared two forms of verdict, which you will take to your jury room with you. One of the verdicts reads as follows: "We the jury, in the above entitled action, find the defendant not guilty." The other reads, "We the jury, in the above entitled action, find the defendant guilty." You will use which ever one of those forms your conclusion calls for. You will of course consider no evidence in this case which has been excluded by the Court.

Any suggestions, gentlemen?

Mr. Rosenquest: I think not.

Mr. Harris: No.

The Court: Swear an officer.

The jury retired at 12 o'clock noon, and at 12:10 o'clock P. M., returned a verdict of guilty.

[fol. 68] In Municipal Court of Minneapolis

Before Hon. Manley L. Fosseen, Judge

[Title omitted]

Docket Entries

Dec. 7, 1925.—Gilbert E. Harris files complaint against defendant for violation of state dental law, Nov. 29, 1925.

Dec. 8, 1925.—Cause called, defendant being in court, whereupon cause continued to Dec. 15, 1925 at 9 A. M. and defendant released on his personal recognizance until said time.

Dec. 11, 1925.—Demurrer filed.

Dec. 15, 1925.—Cause continued to Dec. 21, 1925 at 9 A. M.

Dec. 21, 1925.—Cause continued to Dec. 23, 1925 at 9 A. M.

Dec. 23, 1925.—Cause continued to Jan. 4, 1926 at 9 A. M.

Jan. 4, 1926.—Cause continued to Jan. 7, 1926 at 9 A. M.

Jan. 7, 1926.—Cause continued to Jan. 11, 1926 at 9 A. M.

Jan. 11, 1926.—Cause called, defendant being in custody and in court is arraigned and pleads not guilty, whereupon demurrer overruled. Cause continued to Jan. 12, 1926 at 9 A. M. Jury duly demanded.

Jan. 12, 1926.—Cause called, defendant being in court, whereupon Geo. H. Fleetham, Mrs. Laura Bratager, W. F. Engle, Mrs. Augusta Tonegren, H. N. Grethum, Mrs. Rose Poehler, Henry E. Agneas, Mrs. Marie Jensen, Mrs. K. F. McFarland, Mrs. S. Benedict, Mrs. Dora Foley and Mrs. C. O. Donaldson are sworn in to try the cause, whereupon jury list filed. Whereupon Harriet Young, Eunice Carlson, and Dr. Robt. B. Wilson are sworn and testify in behalf of the State. Whereupon Dr. J. T. Carpenter, Fred Stinson, Hugh J. McGrath, Dr. Howard S. Feeney and defendant are sworn and testify in behalf of the defense. Whereupon testimony closed.

Jan. 13, 1926.—Jury retires under officer J. Novack, who was sworn to supervise their deliberations, whereupon jury

return with a verdict of guilty. Whereupon cause continued to Jan. 14, 1926 at 9 A. M.

Jan. 14, 1926.—Cause continued to Jan. 16, 1926 at 9 A. M.

[fol. 69] Jan. 16, 1926.—Cause called, defendant being in court, whereupon It is ordered that defendant be imprisoned in the County Jail, Hennepin County, for the term of thirty days. Stay of execution of above sentence to Feb. 16, 1926.

Feb. 16, 1926.—Commitment issued and defendant committed to County Jail.

O. J. Hanson, Clerk, by F. B. Sowle, Deputy.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 70] In Municipal Court of Minneapolis

[Title omitted]

Notice as to Settling Case

To Gilbert E. Harris, Esq., attorney for the plaintiff above named:

Take notice that the defendant above named proposes the foregoing and attached as a case to be settled and allowed by the Honorable Clyde R. White, the judge who tried said case.

Russell C. Rosenquest, Attorney for Defendant, 742 Builders' Exchange, Minneapolis, Minnesota.

[fol. 71] In Municipal Court of Minneapolis

[Title omitted]

Stipulation re Proposed Case

It is hereby stipulated that the attached proposed case, consisting of 64 pages of typewritten matter, together with the complaint, demurrer, certified copy of the Municipal Court Clerk's docket entries in said case, State's Exhibits

A and B, and the Court's decision and sentence, may be taken as conformable to the truth, as containing all the evidence offered or introduced on the trial of said case, and all proceedings on said trial; and that the same may be settled and allowed, without notice, as the settled case herein by the Hon. Clyde R. White, the judge who tried said case.

Dated March 17, 1926.

Gilbert E. Harris, Attorney for Plaintiff. Russell C. Rosenquest, Attorney for Defendant.

[fol. 72] In Municipal Court of Minneapolis

[Title omitted]

Order Settling Case—March 18, 1926

I hereby certify that the foregoing case, consisting of 64 pages of typewritten matter, together with the complaint, demurrer, Municipal Court Clerk's docket entries in said case, State's Exhibits A and B, and the Court's decision and sentence, has been examined by me and found conformable to the truth and to contain all the evidence offered or introduced on the trial of said case and all the proceedings of said trial, and I hereby settle and allow the same as the settled case herein.

Dated March 18, 1926.

By the Court:

Clyde R. White, Judge.

[fol. 73] In Municipal Court of Minneapolis

[Title omitted]

Notice of Appeal—February 18, 1926

To Clifford L. Hilton, Esq., Attorney General of the State of Minnesota; Floyd B. Olson, Esq., County Attorney of Hennepin County, Minnesota; Messrs. Oppenheimer, Dickson, Hodgson, Brown and Donnelly, and Gilbert E. Harris, Attorneys for the Board of Dental Examiners of the State of Minnesota:

Please take notice that the above named defendant appeals to the Supreme Court of the State of Minnesota from the judgment of said Municipal Court entered herein on the 16th day of January, 1926, in favor of said plaintiff and against said defendant adjudging said defendant guilty of the offense of practicing dentistry without a license as charged in the complaint herein and sentencing him to imprisonment in the County Jail of Hennepin County, Minnesota, for a period of thirty days. This appeal is taken from the whole of said judgment.

Dated February 18, 1926.

Russell C. Rosenquest, Attorney for Defendant, 742 Builders Exchange, Minneapolis, Minnesota.

[fol. 74] State of Minnesota,
County of Hennepin, ss:

Russell C. Rosenquest, being first duly sworn, on oath deposes and says that at the City of Minneapolis, Minn., on February 18, 1926, he served the foregoing attached Notice of Appeal upon Floyd B. Olson, County Attorney of Hennepin County, Minnesota, by then and there handing to and leaving with Charles Goldblum, Assistant County Attorney, personally, a true and correct copy thereof.

Russell C. Rosenquest.

Subscribed and sworn to before me this 18th day of February, 1926. L. W. Crawhall, Notary Public, Hennepin County, Minn. My commission expires July 15th, 1930. (Seal.)

State of Minnesota,
County of Hennepin, ss:

Fred Clinton, being first duly sworn, on oath deposes and says that on the 18th day of February, 1926, at the City of St. Paul, Minnesota, he served the foregoing Notice of Appeal upon Clifford L. Hilton, Attorney General of the State of Minnesota, by then and there handing to and leaving with said Clifford L. Hilton, personally, a true and correct copy thereof.

That at said time and place he also served said Notice upon Messrs. Oppenheimer, Dickson, Hodgson, Brown and Donnelly, and Gilbert E. Harris, Attorneys for the Board of Dental Examiners of the State of Minnesota, by then and there handing to and leaving with said Gilbert E. Harris, one of said attorneys, personally, a true and correct copy thereof.

Fred Clinton.

Subscribed and sworn to before me this 18th day of February, 1926. R. C. Rosenquest, Notary Public, Hennepin County, Minn. My commission expires June 13, 1927. (Seal.)

(Bond on appeal duly approved, served, and filed.)

[fol. 75] In Supreme Court of Minnesota

25457

State of Minnesota, Respondent,

vs.

Charles H. Graves, Appellant

Opinion—Filed February 20, 1926

Per Curiam:

This is an appeal from a judgment adjudging appellant guilty of the offense of practicing dentistry without a license.

The appellant makes the claim that Section 5760 G. S. 1923 is unconstitutional because it excludes from practice those who do not hold a diploma from a dental college in good standing notwithstanding their actual qualification and ability to serve as dentists.

Upon authority of State v. Graves, 161 Minn. 422, the judgment is affirmed.

Affirmed.

[File endorsement omitted.]

[fol. 76] IN SUPREME COURT OF MINNESOTA

[Title omitted]

ORDER STAYING FURTHER PROCEEDINGS—February 20, 1926

Upon the application of the above named Appellant, it is ordered that all further proceedings on part of Respondent be stayed to include March 20, A. D., 1926, to enable Appellant to apply to the United States Supreme Court for a Writ of Error.

Dated February 20, A. D. 1926.

S. B. Wilson, Chief Justice.

[fol. 77] IN SUPREME COURT OF MINNESOTA

[Title omitted]

JUDGMENT—March 19, 1926

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to wit of the Municipal Court within and for the County of Hennepin be and the same hereby is in all things affirmed.

Dated and signed March 19th, A. D. 1926.

Grace F. Kaercher, Clerk of the Supreme Court State of Minnesota. (Seal of Supreme Court Minnesota.)

[fol. 78] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 79] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PETITION FOR WRIT OF ERROR—March 19, 1926

To the Honorable the Supreme Court of the State of Minnesota:

Your petitioner, the defendant in the above entitled case, hereby respectfully alleges and shows that he is a citizen of the United States and of the State of Minnesota; that on the 20th day of February, 1926, the Supreme Court of the State of Minnesota, sitting at the City of St. Paul in said state, made and entered a final order, decision and judgment in the above entitled case in favor of the plaintiff and against the defendant.

That the said Supreme Court of Minnesota is the highest court of said State of Minnesota in which a decision in this case and matter can be had.

That your petitioner considers himself aggrieved by the said final order, decision and judgment of the said Supreme Court of Minnesota; and alleges that in said final order, decision and judgment, and in the proceedings had in said case, certain errors were committed to the prejudice of said defendant, all of which appear in detail from the assignment of errors filed herewith.

Wherefore your petitioner prays:

1. That a Writ of Error from the Supreme Court of the [fol. 80] United States may issue in his behalf to the Supreme Court of the State of Minnesota to the end that the record in said case may be removed into the Supreme Court of the United States, and the errors complained of by the petitioner may be examined and corrected and said judgment reversed.

2. That a transcript of the said record, proceedings, order, decision, and final judgment, and all papers in said

case, duly authenticated, may be sent to the Supreme Court of the United States.

3. For an order fixing the amount of a supersedeas bond.

Dated March 19, 1926.

Russell C. Rosenquest, Attorney for Petitioner, 742 Builders' Exchange, Minneapolis, Minnesota.

[fols. 80a & 80b] In Supreme Court of Minnesota

[Title omitted]

Order Allowing Writ of Error.—March 19, 1926

The above entitled matter coming on to be heard upon the petition of the defendant therein for a Writ of Error from the Supreme Court of the United States to the Supreme of the State of Minnesota, and upon examination of said petition and the record in said case, and desiring to give petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said case;

It is ordered, That a Writ of Error be, and is hereby, allowed to this Court from the Supreme Court of the United States upon the execution of a bond by the defendant to the State of Minnesota in the sum of Five Hundred Dollars ($500.00); said Writ of Error, and said bond, when approved, to act as a supersedeas.

Further ordered, That a transcript of the record, proceedings, order, decision, and final judgment, and all papers in said case, be duly authenticated and sent to the Supreme Court of the United States.

Dated March 19, 1926.

S. B. Wilson, Chief Justice Supreme Court of Minnesota.

[fol. 81] IN SUPREME COURT OF MINNESOTA

WRIT OF ERROR

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the judges of the Supreme Court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Minnesota and Charles H. Graves, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened, to the great damage of the said Charles H. Graves, as by his complaint appears. We being willing that error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the [fols. 82 & 82a] date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 19th day of March, in the year of our Lord one thousand nine hundred and twenty-six.

Joel M. Dickey, Clerk District Court of the United States, District of Minnesota, Third Division. (Seal of U. S. Dist. Court Dist. of Minnesota, Third Division.)

Allowed March 19, 1926. S. B. Wilson, Chief Justice Supreme Court of Minnesota.

[fol. 83] In Supreme Court of Minnesota

[Title omitted]

Assignments of Error and Prayer for Reversal—March 19, 1926

Now comes the above named defendant, by his counsel, Russell C. Rosenquest, Esq., and respectfully submits that there are errors in the record, proceedings, order, decision, and final judgment of the Supreme Court of the State of Minnesota in the above entitled case, and, for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignments of errors:

The Supreme Court of Minnesota erred in holding and deciding that Section 5760, General Statutes of Minnesota, 1923, is valid. Said section is also known as Section 5018, General Statutes of Minnesota, 1913. The validity of said section was denied and drawn in question by the defendant on the ground that it is in conflict with, in violation of, and repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of the State of Minnesota erred in holding and deciding—

First. That said Section 5760 does not deprive the defendant, or other persons, of liberty or property without due process of law, contrary to the provisions of the Four-
[fol. 84] teenth Amendment of the Constitution of the United States.

Second. That said Section 5760 does not abridge the privileges and immunities of citizens of the United States or of this defendant, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Third. That said Section 5760 does not deny to this defendant, or to other persons within the jurisdiction of the

State of Minnesota, the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Fourth. That said Section 5760 does not grant special and exclusive privileges to certain citizens of the State of Minnesota which it denies to this defendant and to other citizens of the State of Minnesota.

Fifth. That the provisions of said Section 5760 are uniform in their operation thruout the State of Minnesota and upon all citizens of said State similarly situated.

Sixth. That the provisions of said Section 5760 do not deprive the defendant of the right to earn a livelihood in the pursuit of a lawful and harmless occupation.

Seventh. The Supreme Court of Minnesota further erred in affirming the judgment of the lower court made and entered in said case and action adjudging the defendant guilty of the offense of practicing dentistry without a license, contrary to the statute of Minnesota in such case made and provided, and sentencing him to imprisonment therefor.

For which errors the above named defendant prays that the said final order, decision and judgment of the Supreme Court of the State of Minnesota, dated February 20, 1926, [fols. 85 & 85a] be reversed, and a judgment be entered in favor of this defendant.

Dated March 19, 1926.

Russell C. Rosenquest, Attorney for Defendant, 742 Builders' Exchange, Minneapolis, Minnesota.

[fols. 86 & 87] Bond on writ of error for $500, approved and filed March 19, 1926, omitted in printing.

[fols. 88-89a] Citation, in usual form, showing service on Clifford L. Hilton, Esq., omitted in printing.

[fol. 90] Certificate of lodgment omitted in printing.

[fol. 91] Return to writ of error omitted in printing.

[fol. 92] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation by Plaintiff in Error of Parts of Record to be Printed—Filed by leave of court May 3, 1926

Now comes the above named plaintiff in error, by his counsel, and designates the following as the points on which he intends to rely in the above entitled case and matter:

1. Section 5760, General Statutes of Minnesota, 1923, is unconstitutional and void in that it deprives the plaintiff in error, and other persons, of liberty and property without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

2. Said Section 5760 is unconstitutional and void in that it denies to this plaintiff in error, and other persons within the jurisdiction of the State of Minnesota, the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

3. Said Section 5760 is unconstitutional and void in that it abridges the privileges and immunities of citizens of the United States and of this plaintiff in error, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

The specific objection to the statute cited is to that portion thereof which requires that an applicant for a dental license must first present a diploma from an approved [fols. 93 & 94] dental college before he will be permitted an examination by the state board of dental examiners, and it is contended that this requirement of the statute violates the provisions of the Fourteenth Amendment of the Constitution in the respects hereinbefore stated.

The entire record in said case, with the exception of State's Exhbits A, B and C, is material to a consideration of the said points to be relied upon; and it is hereby designated that said entire record, with the exception of State's Exhibits A, B and C, be printed by the Clerk of the above named Court.

Dated March 27, 1926.

Russell C. Rosenquest, Attorney for Plaintiff in Error, 742 Builders' Exchange, Minneapolis, Minneapolis, Minnesota.

Personal service of the foregoing is hereby admitted this 7th day of April, 1926.

Clifford L. Hilton, Attorney General of Minnesota; James E. MacKham, Deputy Attorney General, Counsel for Defendant in Error.

[fol. 95] [File endorsement omitted.]

Endorsed on cover: Filed No. 31,790. Minnesota Supreme Court. Term No. 320. Charles H. Graves, plaintiff in error, vs. The State of Minnesota. Filed March 25, 1926. File No. 31,790.

Supreme Court of the United States

OCTOBER TERM, 1926.

NO. 320.

CHARLES H. GRAVES,

Plaintiff in Error,

vs.

STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF PLAINTIFF IN ERROR.

CHARLES H. GRAVES,
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TABLE OF CASES.

Supreme Court of the United States

OCTOBER TERM, 1926.

NO. 320.

CHARLES H. GRAVES,

Plaintiff in Error,

vs.

STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This case comes to this court on a writ of error to the Supreme Court of the State of Minnesota (R. 55) to review a final judgment of said Supreme Court of Minnesota (R. 52) affirming a judgment of the Municipal Court of the City of Minneapolis adjudging the plaintiff in error guilty of the offense of practicing dentistry without a license (R. 48, fol. 69), contrary to the Statutes of Minnesota in such case made and provided.

A demurrer to the complaint (R. 2) on the ground, among others, that the statute on which it was based violated the

provisions of the Fourteenth Amendment of the Constitution was overruled (R. 3).

At the trial of the case in the Municipal Court of the City of Minneapolis, the plaintiff in error objected to the introduction of any evidence on the ground that the statute on which the complaint against him was based is unconstitutional and void in that it is in violation of the Fourteenth Amendment of the Constitution of the United States (R. 3). The objection was overruled (R. 3), and the plaintiff in error was adjudged guilty of said alleged offense and sentenced to imprisonment therefor (R. 48, fol. 69). An appeal was taken to the Supreme Court of Minnesota from said judgment of the Municipal Court of Minneapolis (R. 50), and on February 20, 1926, the Supreme Court of Minnesota affirmed the judgment of the lower court (R. 51).

State vs. Charles H. Graves, 207 N. W. 560.

The writ of error herein was obtained on March 19, 1926.

This case involves the constitutionality of Section 5 of Chapter 19 of the General Laws of Minnesota for 1889 (being Section 2316 of the Revised Laws of Minnesota, 1905), as amended by Chapter 117 of the General Laws of Minnesota for 1907, as amended by Section 4 of Chapter 221 of the General Laws of Minnesota for 1911. This section is now known and cited as Section 5760, General Statutes of Minnesota, 1923.

The Statutes of Minnesota regulating the practice of dentistry in that state, and upon which the complaint herein was based and under which this prosecution was conducted, are contained in Sections 5757 to 5763, inclusive, General Statutes of Minnesota, 1923. It is the contention of the plaintiff in error that Section 5760 thereof is unconstitutional and void in that it violates the provisions of the

Fourteenth Amendment of the Constitution of the United States, for the reason that it offends against the equality provisions of the amendment, and also deprives the plaintiff in error of his rights, privileges, liberty and property without due process of law.

Said Section 5760, General Statutes of Minnesota, 1923, is set out in full at page 4 of this brief.

The question of the constitutionality of this section was raised: (1) By demurrer to the complaint (R. 2); (2) At the trial by objection to the introduction of any evidence (R. 3); (3) Upon appeal to the Supreme Court of Minnesota (R. 50, *et seq.*), and (4) By assignments of error and prayer for reversal accompanying the petition for the writ of error herein (R. 56).

SPECIFICATIONS OF ERROR.

Plaintiff in error specifies the following errors in the proceedings and judgment below:

The Supreme Court of Minnesota erred in holding and deciding:

1. That Section 5760, General Statutes of Minnesota, 1923, does not deprive the plaintiff in error, or other persons, of liberty or property without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

2. That said Section 5760 does not deny to the plaintiff in error, or to other persons within the jurisdiction of the State of Minnesota, the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

3. That said Section 5760 does not abridge the privileges and immunities of citizens of the United States or of this

plaintiff in error, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

ARGUMENT.

The opinion of the Supreme Court of Minnesota in this case was handed down under date of February 20, 1926, and is reported under the title of *State of Minnesota vs. Charles H. Graves,* in 207 Northwestern Reporter 560, and also appears in the record herein at page 31, *et seq.*

The contention of the plaintiff in error may be stated as follows:

1. Section 5760, General Statutes of Minnesota, 1923, is unconstitutional and void in that it deprives the plaintiff in error, and other persons, of liberty and property without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

2. Said Section 5760 is unconstitutional and void in that it denies to this plaintiff in error, and other persons within the jurisdiction of the State of Minnesota, the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

3. Said Section 5760 is unconstitutional and void in that it abridges the privileges and immunities of citizens of the United States and of this plaintiff in error, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Said section, cited as Sec. 5760, G. S. Minn., 1923, reads as follows:

> "A person not already a registered dentist of the state desiring to practice dentistry therein, shall apply to the secretary of the board for examination and pay a

fee of twenty ($20.00) dollars for the first examination and twenty ($20.00) dollars for each subsequent examination, which in no case shall be refunded. At the next regular meeting he shall present himself for examination and produce his diploma from some dental college of good standing, of which standing the board shall be the judges, also satisfactory evidence showing that the applicant is of good moral character. The board shall give the applicant such an elementary, practical examination as to thoroughly test his fitness for the practice and include therein the subjects of anatomy, physiology, chemistry, materia-medica, therapeutics, metallurgy, histology, pathology, and operative, surgical and mechanical dentistry. If the applicant successfully passes the examination, he shall be registered by the board as a licensed dentist, and supplied with the certificate of registration signed by all members of the board of dental examiners.

Provided that any dentist who has been in legal practice in another state having and maintaining an equal standard of laws regulating the practice of dentistry with this state, for five years or more, and is a reputable dentist of good moral character, and is desirous of removing to this state and deposits in person with the board of dental examiners a certificate from the examining board of the state in which he is registered, certifying the fact of his registration and that he is of good moral character and professional attainments, and upon payment of a fee of fifty ($50.00) dollars may, at the discretion of the board, be granted a license to practice in this state without further theoretical examination.

The board upon hearing, after twenty days' notice

thereof, may revoke the license of anyone who with intent to deceive the public shall practice dentistry under an assumed name or where it shall be shown that the holder of such license is not of good moral character. It shall be no defense for a person prosecuted for practicing dentistry under one name, without a license, that he shall have been licensed under a different name, unless it shall be shown that such practice was without intent to defraud or deceive."

Section 5759, G. S. Minn., 1923, defines what shall be deemed to be practicing dentistry within the meaning of the statutes regulating the practice thereof; and Section 5763 provides that any person who shall violate any of the provisions of these statutes shall be guilty of a misdemeanor.

Specifically, our objection to the statute quoted is to that portion thereof which requires that an applicant for a dental license must first present a diploma from an approved dental college before he will be permitted an examination by the state board. It is our contention that this requirement of the statute violates the provisions of the Fourteenth Amendment of the Federal Constitution in two respects, which may be stated as follows:

1. The requirement is so arbitrary, capricious and unreasonable that it cannot be considered as constituting due process of law within the meaning of the Fourteenth Amendment.

2. The requirement violates the equality provisions of the Fourteenth Amendment and abridges the privileges and immunities contemplated by the amendment in that it sets up a classification which is unreasonable, arbitrary and discriminatory, is not based on any reasonable, substantial or

natural distinction, is not suggested by any reasons of necessity, and rests on no ground of public policy.

These contentions will be discussed in their order.

1. THE REQUIREMENT IN SAID SECTION 5760 THAT AN APPLICANT FOR A DENTAL LICENSE MUST FIRST PRESENT A DIPLOMA FROM AN APPROVED DENTAL COLLEGE BEFORE HE WILL BE PERMITTED AN EXAMINATION BY THE STATE BOARD IS UNCONSTITUTIONAL AND VOID IN THAT IT IS SO UNREASONABLE, ARBITRARY AND CAPRICIOUS THAT IT CANNOT BE CONSIDERED AS CONSTITUTING DUE PROCESS OF LAW WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

No doubt this law was designed to protect the public from ignorant and incompetent dental practitioners; and, doubtless, the state, by virtue of its police power, has the right and authority to enact legislation having for its object the promotion and preservation of the safety, health and general well being of society. However, such legislation must be broad enough to insure to all the liberty and freedom of engaging in any lawful occupation consistent with the public safety, health and welfare.

In order that a statute may be sustained as a valid exercise of the police power,

> "the courts must be able to see that the enactment has for its object the prevention of some offense or manifest evil, or the preservation of the public health, safety, morals and general welfare, and that there is some *real and substantial connection* between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some *plain, ap-*

preciable and appropriate manner tend toward the accomplishment of the object for which the power is exercised."

12 *Corpus Juris* 929, Sec. 441.

"* * * If a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no *real or substantial relation* to these objects or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the constitution."

Mugler vs. Kansas, 123 U. S. 625.

The above authorities announce well known and well settled rules of law, the application of which to a particular statute or to a particular state of facts, however, is not entirely without difficulty.

Considering the statute here attacked in the light of the rules of law referred to, where is the *real and substantial connection* between the statutory requirement of a diploma as a *prerequisite* to the right of examination and the protection of the public health and welfare? Can it possibly be said that the requirement of a diploma as a *prerequisite* to the right of examination tends in some *plain and appreciable manner* toward the accomplishment of the object for which the statute was passed? Clearly the requirement that an applicant for a license must have a diploma before he will be permitted an examination by the state board has no relation to the end sought to be attained, which is competent dental practitioners, for it is perfectly clear and is a demonstrable fact that a man may be thoroughly qualified in both practical experience and scientific knowledge without ever having attended a dental college, just as many of our most learned, skillful and profound lawyers have never attended

a law school. Such a requirement and such a discrimination as is found in this statute is so arbitrary and so unreasonable that it should not be sanctioned or sustained.

> "The police power of the state extends only to such measures as are reasonable and the general rule is that all police measures *must be reasonable under all circumstances.* In every case it must appear that the means adopted are *reasonably necessary and appropriate* for the accomplishment of a legitimate object falling within the domain of the police power. A statute, to be within this power, must be reasonable in its operation upon the persons whom it affects, and not unduly oppressive. The validity of a police regulation, therefore, primarily depends on whether under the existing circumstances the regulation is reasonable or arbitrary, and whether it is really designed to accomplish a purpose properly falling within the scope of the police power."
>
> 6 *Ruling Case Law* 236.

The State cannot exercise its police powers arbitrarily and despotically, nor unless there exists a *reasonable relation* between the character of the legislation and the policy to be subserved.

Silz vs. Hesterberg, 211 U. S. 31.

Lawton vs. Steele, 152 U. S. 133, 137.

> "There must be reasonable grounds for the police interference and also *the means adopted must be reasonably necessary* for the accomplishment of the purpose in view."
>
> *Boanett vs. Vallier*, 136 Wis. 193.

> "*The difference between what is and what is not rea-*

sonable, frequently constitutes the dividing line between a valid and a void enactment by the legislature in the exercise of its police power."

Health Department vs. Trinity Church, 145 N. Y. 32.

Reasonableness means moderation and also proportionateness of means to end.

Freund, Police Power, Sec. 63.

Is this statutory requirement of a diploma as a prerequisite to the right of examination *reasonably necessary* to protect the public from incompetent dental practitioners? Is this requirement *appropriate* for the accomplishment of the end in view? Does it tend in some *clear and appreciable* way toward the accomplishment of the legislative object? The statute itself contains the answers to these questions, for even though an applicant *does* possess a dental diploma, the statute provides that he cannot be licensed until he successfully passes the examination of the state board. In other words, the legislature is unwilling to license a man merely because he has a diploma. It is not satisfied with such evidence of his qualifications, but demands that he prove his qualifications by passing both a theoretical and practical examination, exhaustive in character, before engaging in practice.

There certainly is no reason of public policy for requiring all dental practitioners to be the possessors of diplomas. The public health, safety and welfare is not safeguarded by that requirement alone, nor does that requirement even tend to protect the public welfare. The only protection is found in the requirement that all applicants must prove their qualifications upon an examination, and if a man without a diploma can successfully pass the exhaustively technical and practical examination prescribed by the Minnesota stat-

ute, surely the public health, safety and welfare will not be jeopardized by permitting that man to engage in practice.

The statutory requirement then, of a diploma as a prerequisite to the right of examination, is unreasonable, arbitrary and capricious, has no reasonable relation to the end sought to be attained, and therefore should not be upheld. If a restriction is without reason or necessity it cannot be enforced.

> "If the statutes are arbitrary and unreasonable *beyond the necessities of the case*, the courts will declare their invalidity."
>
> *Welch vs. Swasey*, 214 U. S. 91.

Surely it cannot be said that the "necessities of the case" demand that a practitioner be possessed of a diploma, or, as this statute requires, that an *applicant* for a license *be possessed of a diploma before he has even the right to the examination provided for.*

> "Whether the police power has been exercised within the proper limitations, whether or not a law is reasonable, whether a particular measure is designed to further some governmental function, or to further private gain, and whether an act bears any reasonable relation to the public purpose sought to be accomplished, are all judicial questions."
>
> 6 *Ruling Case Law* 242.

In *State vs. Walker*, 48 Wash. 8, 15 Ann. Cas. 257, the court held void, as being arbitrary and unreasonable, a section of the state statute which provided, as a prerequisite to obtaining a barber's certificate of registration, that the applicant shall have "studied the trade for two years as an apprentice under, or as a qualified and practicing barber." The court said:

"We think the provision quoted is both unreasonable and arbitrary. What the public is interested to know is that the barber is competent. How he acquired his skill or knowledge is of minor importance. If he has qualified himself by attendance upon some school for that purpose, or by his own efforts unassisted, or by having served an apprenticeship under some qualified barber, or in some other equally efficacious way, that is all that can be reasonably be required of him. To limit the qualification to one particular way, or to one particular place where there are many universally recognized as equally good, and to provide that none others need apply, is no doubt unreasonable. The result is that this requirement of the section is void * * *."

The logic of this case is utterly unassailable and wholly unanswerable, and the facts and reasoning apply with striking force to the case at bar.

All courts are very careful to say that the test of the right to practice a profession affecting the public health and welfare must be a test as to capability and qualification, and the legislature has no power to require any other. And when the natural and reasonable effect of a statute is to violate any of the provisions of the Constitution, the statute will be held void in whatever language it may be framed.

Dent vs. West Virginia, 129 U. S. 114.

The Supreme Court of the United States upheld the medical laws of West Virginia in the case last cited, because those laws made *qualification* the sole test of the right to practice, and provided three ways in which to prove qualification, to-wit: (1) Evidence of graduation from a reputable school, *or* (2) Practice in the state for ten years, *or* (3) Examination by the state board. The West Virginia

statute *excluded no one* who was qualified from the right to practice, and *gave every one* the right and opportunity to prove his qualifications by submitting to examination by the state board. Under the Minnesota statute, however, *every one, with absolute and entire disregard for his qualifications*, is precluded from even an opportunity to prove his fitness to practice unless he first presents a diploma from a school satisfactory to the state board. Plainly, the Minnesota statute does not make *qualification* and *competency* the test as to whether a license should be granted. The right to practice dentistry in Minnesota depends upon the applicant passing the examination of the state board. But the Minnesota statute grants only a portion of those who desire to practice dentistry and only a portion of that class who may be competent and qualified to practice an opportunity to prove their qualifications upon examination. This opportunity is denied, by this statute, to all except those who have diplomas from certain colleges. The right to examination, therefore, seems clearly to be so hedged about with an unwarranted restriction and so burdened with an unreasonable and arbitrary condition that the statute must be condemned as an arbitrary, unwarranted and despotic exercise of the police power and as not constituting due process of law. The provisions of the statute are so unreasonable, arbitrary and capricious, have no reasonable relation to or connection with the object sought, and the conditions imposed by it are so utterly arbitrary, oppressive and unreasonable that the statute cannot be said to comply with the constitutional requirement of due process of law.

In speaking of police power legislation, the United States Supreme Court, in *Lochner vs. New York*, 198 U. S. 53, 64, said:

"It is impossible for us to shut our eyes to the fact

that many of the laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so when, from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose. *Minnesota vs. Barber*, 136 U. S. 313; *Brimmer vs. Rebman*, 138 U. S. 78. The courts looked beyond the mere letter of the law in such cases. *Yick Wo vs. Hopkins*, 118 U. S. 356."

Much of the above language was quoted with approval and applied in *Adair vs. United States*, 208 U. S. 173, at 174.

In *Smith vs. State of Texas*, 233 U. S. 630, the court held unconstitutional and void a state statute which made it a misdemeanor for any person to act as a conductor on a railway train in Texas without having previously served for two years as a freight conductor or brakeman. The court said:

"* * * There is no reason or authority for the proposition that conditions may be imposed by statute which will admit some who are competent and arbitrarily exclude others who are equally competent to labor on terms mutually satisfactory to employer and employee. None of the cases sustain the proposition that, under the power to secure the public safety, a privileged class can be created and be then given a monopoly of the

right to work in a special or favored position. Such a statute would *shut the door, without a hearing*, upon many persons and classes of persons who are competent to serve, and would deprive them of the liberty to work in a calling they were qualified to fill with safety to the public and benefit to themselves.

The statute here under consideration permits those who had been freight conductors for two years before the law was passed, and those who for two years have been freight conductors in other states, to act in the same capacity in the state of Texas. But barring these exceptional cases, the act permits brakemen on freight trains to be promoted to the position of conductor on a freight train, but excludes all other citizens of the United States from the right to engage in such service. The statute does not require the brakeman to prove his fitness, though it does prevent all others from showing that they are competent. The act prescribes no other qualification for appointment as conductor than that for two years the applicant should have been a brakeman on a freight train, *but affords no opportunity to any others to prove their fitness*. It thus absolutely excludes the whole body of the public, including many railroad men, from the right to secure employment as conductor on a freight train.

* * * Under this statute * * * men having the same kind of experience as brakemen, are given no chance to show their competency, but are arbitrarily denied the right to act as conductors."

Cannot the same statements be made with equal force regarding the Minnesota statute here under consideration? Does not the Minnesota statute, by its arbitrary requirement

of a diploma as a prerequisite to the right of examination, equally with the Texas statute in the Smith Case, *supra*, impose conditions "which will admit some who are competent and arbitrarily exclude others who are equally competent"? Does not this requirement of the Minnesota statute, like the Texas statute, "shut the door, without a hearing, upon many persons and classes of persons who are competent to serve, and * * * deprive them of the liberty to work in a calling they are qualified to fill with safety to the public and benefit to themselves"?

The Texas statute prescribed no other qualification for appointment as conductor than that for two years the applicant should have been a brakeman on a freight train. The Minnesota statute prescribes, as a prerequisite to the right of examination, the arbitrary requirement that the applicant must possess a dental diploma, and, equally with the Texas statute, "affords no opportunity to any others to prove their fitness."

In the Texas case, the court recognized the fact that classes of men other than brakemen may be equally as well qualified as brakemen to serve as conductors, and condemned the statute because such other qualified men "are given no chance to show their competency, but are arbitrarily denied the right to act as conductors." Surely, there can be no possible doubt but that it is a fact that others than holders of dental diplomas may be equally as well qualified as such holders to practice dentistry, or at least equally entitled to take the state examination. It must be perfectly apparent that such others may be as well qualified as the diploma holders, and certainly equally entitled with them, to take the dental examination prescribed by the Minnesota statute. The Minnesota statute should therefore be condemned, as was the Texas statute, because "it affords no opportunity to

any others to prove their fitness * * *." Men with equal qualifications "are given no chance to show their competency, but are arbitrarily denied the right" to even take the state examination.

The Texas case, the court says, "distinctly raises the question as to whether a statute, in permitting certain competent men to serve, can lay down a test which absolutely prohibits other competent men from entering the same private employment. It would seem that to ask the question is to answer (it) * * *." Is not the identical question raised in the case at bar, and must not the identical answer be given?

The court further said in the Texas case, *supra*:

> "A statute which permits a brakeman to act—because he is presumptively competent—and prohibits the employment of engineers and all others who can affirmatively prove that they are likewise competent, is not confined to securing the public safety, but denies to many the liberty of contract granted to brakemen, and operates to establish rules of promotion in a private employment."
>
> *Smith vs. State of Texas*, 233 U. S. 630.

It may be argued that there is a difference between brakemen and dentists, but it cannot be denied that the constitutional basis of the legislation in both cases is the same, and that the validity of such legislation must be tested by the same identical principles of constitutional law.

In *Smith vs. State of Texas*, *supra*, the court calls attention to the fact that the record in said case contains affirmative proof of the fact that persons other than brakemen are actually qualified to act as conductors on railway trains. In the case at bar, the court's attention is earnestly invited

to an extensive portion of the record containing affirmative proof of the fact that this plaintiff in error is actually a capable, competent, skillful and efficient dentist (R. 22-43, incl.). In other words, the instant case may be said to be almost identical with the Smith Case, *supra*. It involves the application of exactly the same legal principles, and the facts and record in both cases are strikingly alike. It would seem impossible to draw a sound and reasonable distinction between the two cases.

We are not contesting the right of the state to prescribe reasonable tests of fitness, or do we deny that the state has the right to say that dental practitioners must be qualified and competent. We are not complaining of an unjust discrimination in the nature or character of the test of fitness prescribed by this Minnesota statute, for that test is the *examination itself*; our complaint is that the Minnesota statute, like the Texas statute in the Smith Case, *supra*, "shuts the door, without a hearing, upon many persons and classes of persons who are competent to serve," and "lays down a test which absolutely prohibits other competent men from entering the same * * * employment."

All the cases "recognize the necessity of avoiding the fixing of arbitrary tests by which competent persons would be excluded from lawful employment."

Smith vs. State of Texas, supra.

See also *Smith vs. Alabama*, 124 U. S. 465.

In *Smith vs. Alabama*, 124 U. S. 465, the court sustained an Alabama statute which required all locomotive engineers to have a license, because the statute did not "prescribe any arbitrary conditions of the grant." It was the "arbitrary condition" contained in the Texas statute in *Smith vs. Texas*, *supra*, which served to annul that law. Likewise, it is the

"arbitrary condition," that unreasonable and irrelevant requirement of a dental diploma *as a prerequisite to the right of examination*, contained in the Minnesota statute here under consideration, which renders that statute invalid.

The Minnesota statute unreasonably and arbitrarily restricts the right to engage in a lawful occupation by imposing an arbitrary and irrelevant condition upon the right to take the prescribed examination for a license to engage in such occupation. The result is that many competent men are deprived of an opportunity to engage in a calling for which they are qualified and fitted by being denied any opportunity to prove their qualifications by taking the state examination. A statute which denies competent and qualified men the right to engage in a lawful occupation by imposing the narrow, restrictive, irrelevant, oppressive and arbitrary condition on the right of examination imposed by the Minnesota statute, and which provides no other method of testing their capacity or fitness but denies them any opportunity of showing their qualifications before some board or expert tribunal, is so unreasonable, despotic, arbitrary and capricious that it should be condemned as violative of the constitutional provisions referred to.

The requirement of a diploma as a prerequisite to the right of examination is arbitrary and capricious upon its face. Obviously, it was not enacted for the sole purpose of protecting the public from the results of incompetence and inexperience. Under this statute, regardless of the competency of a man who does not happen to possess a diploma, no method is provided for according him any hearing; but a bold, arbitrary, unreasonable and uncompromising condition and restriction is laid down which forever bars him.

Constitutional provisions are adopted for practical purposes, to meet practical conditions, and to serve practical

ends. They should be interpreted, applied and enforced in practical ways, looking at the substance of the matters involved rather than their forms. The necessary practical effect of any statute, or any construction thereof, is of prime importance in determining its constitutionality.

Can the legislature be permitted to say to a man, "We do not care how much you know, we do not care what you can do, we do not care how well or how thoroughly you are qualified by practical experience, or otherwise, to practice dentistry, the protection of the public health, safety and welfare demands that you have a dental diploma before you are even to be permitted to take the examination of the state board"? To ask the question seems to answer it. Does it not sound foolish? Is there anything reasonable about it? Is it not arbitrary and capricious? Do the "necessities of the case" require a rule like that? Is the public health, safety and welfare protected and safeguarded by such a requirement? And yet is not that exactly the statement the legislature makes in this statute? Is not that precisely the exact meaning and effect of this law?

If a state board should act arbitrarily, capriciously and unreasonably, and without just cause bar a man from the right to engage in a lawful occupation for which he was well qualified, no court would uphold it.

Dent vs. West Virginia, 129 U. S. 114.

Yick Wo vs. Hopkins, 118 U. S. 369.

Reetz vs. Michigan, 188 U. S. 508, 509.

Likewise, if a state statute, like the Minnesota statute here involved, contains a provision which is so unreasonable, arbitrary, capricious and oppressive that its effect is to bar competent men from any opportunity of proving their qualifications, it should unhesitatingly be condemned.

There is no basis or support in reason or logic or anything else for the requirement in Sec. 5760, G. S. Minn., 1923, that a man must have a diploma before he will be permitted to take the state board examination as to his competency. It is very earnestly insisted, therefore, that said section should be condemned as an unwarranted, oppressive and despotic exercise of the police power, and as so arbitrary, capricious and unreasonable that it cannot be considered as constituting due process of law.

2. THE REQUIREMENT IN SAID SECTION 5760 THAT AN APPLICANT FOR A DENTAL LICENSE MUST FIRST PRESENT A DIPLOMA FROM AN APPROVED DENTAL COLLEGE BEFORE HE WILL BE PERMITTED AN EXAMINATION BY THE STATE BOARD IS UNCONSTITUTIONAL AND VOID FOR THE REASON THAT IT VIOLATES THE EQUALITY PROVISIONS OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND ABRIDGES THE PRIVILEGES AND IMMUNITIES CONTEMPLATED BY THE AMENDMENT IN THAT IT SETS UP A CLASSIFICATION WHICH IS UNREASONABLE, ARBITRARY AND DISCRIMINATORY, IS NOT BASED ON ANY REASONABLE, SUBSTANTIAL OR NATURAL DISTINCTION, IS NOT SUGGESTED BY ANY REASONS OF NECESSITY AND RESTS ON NO GROUNDS OF PUBLIC POLICY.

The equality clause of the Fourteenth Amendment means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under the same circumstances.

Missouri vs. Lewis, 101 U. S. 22.

Moore vs. Missouri, 159 U. S. 673.

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction *against intentional and arbitrary discrimination*, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."

Zoline, Fed. Appellate Juris. & Pro., 2nd Ed., Sec. 429.

While class legislation is prohibited by the constitutional guarantee of the equal protection of the laws, yet this does not, of course, prohibit a reasonable classification of persons and things for the purpose of legislation. But the classification must be based on proper, reasonable and justifiable distinctions considering the purpose of the law.

6 *Ruling Case Law* 373.

In *Gulf, Colorado & Santa Fe Railway vs. Ellis*, 165 U. S. 150, the court said (pp. 155, 159, 160, 165):

Classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis * * *. But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this * * *. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government * * *. It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has

been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection." (Quoted in *Connolly vs. Union Sewer Pipe Co.*, 184 U. S. 540, at 560, 561; and approved and applied in *Colting vs. Kansas City Stock Yards Co.*, 183 U. S. 79.)

"It has been repeatedly said that the guaranty of the equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes of persons in like circumstances, in their lives, their liberty and their property, and in the pursuit of happiness. On other occasions it has been said that the equal protection of the laws is the pledge of the protection of equal laws and that it means of *equality of opportunity* to all in like circumstances. This constitutional guarantee requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed, and also in exemption from liabilities * * *. One of the principles on which this government was founded is that of equality of rights and this principle is emphasized in that clause of the Fourteenth Amendment which prohibits any state to deny to any individual the equal protection of the laws."

6 *Ruling Case Law* 370.

It is a fundamental principle of constitutional law that the classification of subjects, to be constitutional, must be based on a *substantial distinction* which makes one class so different from another as to suggest the necessity of different legislation with respect thereto. Laws which are pub-

lic in their purpose may be confined or applied to a particular class of persons if such laws are general in their application to the cases to which they apply, *provided the classification is not arbitrary, but rests on sound reasons of public policy.*

An examination of Section 5760, G. S. Minn., 1923, reveals that this statute makes a classification by which, from among the whole people of the state, it designates a class who may become licensed dentists, and applies to them a law granting them the exclusive right and privilege of being examined as to their qualifications, and if found qualified, to practice their profession. *The basis of this classification and discrimination is the possession of a dental diploma.*

Much of what has been said under subdivision 1 of this argument is equally pertinent and applies with equal force to this branch of the argument.

By this statute the legislature admits that graduates are not necessarily qualified to practice, else it would not require them to be examined The statute does not permit those who may be equally competent but who do not happen to have diplomas to be examined at all. *The only basis of this distinction and discrimination is the possession of a diploma.* The statute clearly does not make *capability* and *competency* the test as to whether or not a license should be granted. Actually, the statute is so framed as to preclude a large class, who may be and are fully qualified and competent to practice dentistry, from even an opportunity to prove their capabilities. While it may be reasonable to presume that one who holds a dental diploma may be a competent person to practice dentistry, yet it is a presumption merely. It is fully as reasonable to conclude, and in fact is a truth which cannot be denied, that one who may not have graduated from a dental college but who has worked and studied

for many years under the guidance of able and experienced practitioners and has himself acquired an extensive practical experience through the actual performance, as a student under the personal supervision of skilled and capable dental surgeons, of dental work in all its branches, is a thoroughly competent and qualified dentist. At least such a man, unless he is to be arbitrarily and unreasonably discriminated against and denied the equal protection of the laws, should be permitted to stand on an equal footing with every other applicant for a license and given an equal opportunity to prove his qualifications by taking the examination of the state board, and thereby determining as a matter of fact whether or not he is qualified and competent to practice dentistry in Minnesota. Yet, under this statute, such a man, regardless of his ability, skill or learning in his profession, can never lawfully engage in practice; he is not even entitled to an examination by the state board. He is arbitrarily denied that equality of opportunity to secure which this government was founded, and the equal protection of the laws which our Constitution guarantees. Not having a diploma from a dental college, of whose standing the board shall be the judge, he will not be examined; his qualifications are wholly immaterial.

Can any law be more arbitrary and unreasonable than this? Does it not constitute an arbitrary and unreasonable classification and discrimination? Is it anything but class legislation, flagrantly discriminating against some and favoring others?

The possession of a diploma is the basis of the classification which this statute makes, and it is submitted that this distinction is so arbitrary, trivial, meaningless and unsubstantial that it cannot be permitted to stand.

Viewing this statute in its most favorable light from a con-

stitutional viewpoint, it may be said to apply to one class, which may be denominated as those desiring to practice dentistry. The statute selects particular individuals from this class, or constituents of this class, and subjects them to peculiar rules and imposes upon them special obligations, burdens and restrictions which others in the same class are exempt from, and denies them rights and privileges which are granted to the rest of the class. These particular individuals, these constituents of the class, are those individuals who do not possess a diploma. There is no material difference in their situation as compared to the situation of the rest of the class. The *only* difference and the *only* distinction between them and the rest of the class to which the statute applies is that they do not possess that magical document called a dental diploma, without which the public health, safety and welfare would be jeopardized and imperiled, *even though they successfully passed the state examination.* Regardless of their actual professional qualifications, they are denied an equal right with the rest of the class to prove them, and are arbitrarily and unreasonably singled out and made victims of the legislative scalping knife.

> "The legislature cannot take what might be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered factions of the original unit as two classes, and thereupon enact different rules for the government of each."
>
> 6 *Ruling Case Law* 383, and cases therein cited.

This rule forbids exactly just what the legislature has done in this statute.

The statute may also be considered as making a slightly different classification than the one just suggested. It may be considered as applying to one class which may be desig-

nated as those desiring to practice dentistry who possess dental diplomas. In either view, the statute is obnoxious.

In 6 *Ruling Case Law* 381, *et seq.*, the law is summarized as follows:

> "A law is not general because it operates on all within a class unless there is a substantial reason why it is made to operate on that class only, and not generally on all. It has been frequently said that it must be based on substantial distinctions which make real differences and are germane to the purposes of the law; and that there must be such a difference between the situation and circumstances of all the members of the class and the situation and circumstances of all other members of the state in relation to the subjects of the discriminatory legislation as presents a just, natural reason for the difference made in their liabilities and burdens, and in their rights and privileges. It has also been said that the reason for the classification must inhere in the subject-matter, and must be natural and substantial, and must be one suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them. If there is no real difference between localities, persons, occupations or property, the state cannot make one in favor of some persons over others; and it is only when such distinctions exist that differentiate in *important particulars*, persons or classes of persons from the body of the people, that laws having operation only upon such particular persons or classes of persons are upheld as valid enactments."

Certainly it cannot be said that a man without a diploma

who can prove his qualifications by passing the state examination is in a situation and condition so different from that of a man who has a diploma that the state, in the exercise of its police power, can enact laws arbitrarily discriminating against him. The difference between such men is not such a difference as to form any proper basis for classification for legislative purposes.

Classification is essentially the same in law as it is in other departments of knowledge or practice. No reasonable man would think of classifying his employees on the basis of a diploma. It is common knowledge that a diploma is of slight value is estimating a man's ability or capacity. A dentist's usefulness and value to the public depends not on his scholastic attainments or his technical learning, but primarily on his ability to use his knowledge and experience in a practical, skillful, useful and efficient way. The possession of a diploma and a degree from all the dental colleges in America would be no guarantee that the possessor was qualified and competent to practice his profession, for many men lack the ability to apply their knowledge in practical ways. The same thing cannot be said of a man who has acquired his professional skill and learning in the course of years of practical experience; the extensive practical experience of such a man is a guarantee of usefulness and service to the public.

The following cases are illustrative of what the courts have condemned as constituting arbitrary classification:

Gulf, Col. & Santa Fe Ry. vs. Ellis, 165 U. S. 150.

Connolly vs. Union Sewer Pipe Co., 184 U. S. 540.

Cotting vs. Kansas City Stock Yds. Co., 183 U. S. 79.

Smith vs. Texas, 233 U. S. 630.

Yick Wo vs. Hopkins, 118 U. S. 369.

State vs. Walker, 48 Wash. 8, 15 Ann. Cas. 257.

In *Smith vs. Texas*, 233 U. S. 630, the court said:

> "None of the cases sustain the proposition that, under the power to secure the public safety, a privileged class can be created and be then given the monopoly of the right to work in a special or favored position."

Unquestionably the Minnesota statute here under consideration creates a "privileged class," *i. e.*, those who have dental diplomas, and gives this class a monopoly of the right to work as dentist by conferring upon this class exclusively the right to take the state board examination. Manifestly, this statute gives a monopoly in a particular employment to a favored class, and deprives those who do not fall within the favored class of their liberty and freedom without due process of law and denies to them the equal protection of the laws. None except members of this favored class can ever become licensed dentists in Minnesota. Clearly, the restriction of the right to take the state examination to those who have dental diplomas is arbitrary, capricious, unreasonable and oppressive upon its face, and is not required, and is not by any stretch of the imagination even reasonably necessary, for the purpose of protecting the public health, safety and welfare. The classification set up by this statute has no reasonable basis whatever, it constitutes merely an arbitrary selection without any real or substantial difference between the subjects granted and those denied the privilege conferred by it. It must be admitted that this statute does confer certain rights and privileges upon one class of persons which it denies to all others, and there being no substantial difference or distinction between the favored class and all others, the statute plainly shows undue discrimination and constitutes a denial of the equal protection of the laws.

A diploma is no proper basis for classification, for any purpose. A man without a diploma who can affirmatively prove his qualifications by passing both a theoretical and practical examination, and who is denied the right to prove his qualifications solely on the ground that he has no diploma, is certainly unreasonably and arbitrarily discriminated against and denied the equal protection of the laws.

Upon this argument it is earnestly and sincerely urged that Section 5760, G. S. Minn., 1923, is unconstitutional and void in that is offends against the equality provision of the Fourteenth Amendment, and is so unreasonable, arbitrary and capricious that it cannot be held to comply with the constitutional requirement of due process of law.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 320.

CHARLES H. GRAVES,
Plaintiff in Error,

v.

THE STATE OF MINNESOTA,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

CLIFFORD L. HILTON,
Attorney General.

JAMES E. MARKHAM,
Deputy Attorney General.

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STATEMENT OF THE CASE.

The plaintiff in error asks this court by its decision to relieve him from the consequences of frequent violations of the laws of the state of Minnesota forbidding the practice of dentistry

in that state without first obtaining a license agreeably to the provisions of the statute. The first offense charged against him was in January, 1922. For this offense he was tried, convicted, and sentenced to imprisonment in the workhouse of the city of Minneapolis. He appealed to the supreme court of the state, where the judgment of conviction was affirmed.

State v. Graves, 161 Minn. 122.

The case was brought before this court by writ of error. Later the plaintiff in error abandoned that appeal, and this court entered its order of dismissal.

Graves v. Minnesota, 70 L. ed. 394.

While that cause was pending there was, of course, a stay of proceedings; but upon its remand the plaintiff in error was taken into custody for commitment to prison in accordance with the sentence of the court. Thereupon he sought release from custody by application to the United States district court for the district of Minnesota for a writ of habeas corpus, which application was denied. He appealed from the order denying that application to the United States circuit court of appeals and was released on bail pending the decision of that court.

For a second offense against the statute the plaintiff in error was arrested, tried, and convicted in the state court. He appealed to the supreme court of the state, where the judgment was affirmed.

State v. Graves, 207 N. W. 560.

For the purpose of carrying the judgment of the court in this last mentioned case into effect, a commitment was issued and he was again taken into custody. Thereupon he applied to the district court of the state for his release on habeas cor-

pus, upon the claim that the pendency of his appeal to the United States circuit court of appeals from the order of the United States district court refusing a writ of habeas corpus under the provisions of § 766, U. S. Revised Statutes, had the effect of suspending all proceedings in the state courts for the enforcement of the statute. The court denied this application, and he appealed to the supreme court of the state, where the judgment was affirmed.

Graves v. Brunskill, 209 N. W. 24.

He has applied to this court for a writ of certiorari to review the judgment of the supreme court of Minnesota in this last mentioned proceeding.

Graves v. Brunskill, No. 623, October Term, 1926.

We refrain from comment on the multiplicity of proceedings and discuss but briefly the merits of the contention.

ARGUMENT.

The Minnesota statute under which the plaintiff in error was prosecuted and convicted has been in force since 1889. It has been construed and sustained in a number of state decisions.

State v. Vandersluis, 42 Minn. 129;

State v. Taylor, 106 Minn. 218;

State v. Crombie, 107 Minn. 166.

A Washington statute almost identical in its provisions with the one under consideration here was sustained against the precise objection here presented, that the requirement of a diploma of graduation from a dental college is discriminatory and unreasonable; and this, notwithstanding the circumstance that no college in the state was authorized to issue such diploma.

State v. Littooy, 37 Wash. 693.

The Washington statute was before this court for its consideration in Douglas v. Noble, 261 U. S. 165. It was there said:

> "It is pointed out that the statute does not in terms direct that the examination shall relate to the applicant's qualifications to practice dentistry; that it does not prescribe the subjects upon which applicants shall be examined, or whether proficiency shall be determined by knowledge of theory or by requiring applicants to demonstrate skill with the tools and materials of the profession; that it does not provide whether the examination shall be oral or written or what percentages of correct answers shall be required to pass the examination; and that it does not require the keeping of records of the proceedings which could be used for the purposes of review.

"What authority the statute purports to confer upon the Board is a question of construction. If it purported to confer arbitrary discretion to withhold a license or to impose conditions which have no relation to the applicant's qualifications to practice dentistry, the statute would, of course, violate the due process clause of the 14th amendment. Its construction is a question of state law. * * *

"The statute provides that the examination shall be before a board of practicing dentists; that the applicant must be a graduate of a reputable dental school, and that he must be of good moral character. Thus, the general standard of fitness and the character and scope of the examination are clearly indicated. Whether the applicant possesses the qualifications inherent in that standard is a question of fact."

The statute was held to be within the reasonable and permissible authority of the legislature of the state.

We think this decision must be given controlling importance in the determination of the question involved in the instant case, and we find no occasion to discuss the principles involved in the decisions of this court in

Lochner v. New York, 198 U. S. 53, involving regulation of reasonable hours of labor;

Minnesota v. Barber, 136 U. S. 313, the slaughter house cases;

Brimmer v. Rebman, 138 U. S. 78, involving regulations for the sale of meats;

Adair v. United States, 208 U. S. 161, affecting employment regulations by a carrier engaged in interstate commerce; and

Smith v. Texas, 233 U. S. 630, involving state regulation of private employment.

The same may be said of the other cases cited in the brief for the plaintiff in error relating to the reasonable exercise of the police power of the state.

We submit that the Minnesota statute imposes no unreasonable or arbitrary restriction upon the right to practice dentistry in that state, and that the judgment under review should be affirmed.

For the State:

CLIFFORD L. HILTON,
Attorney General.

JAMES E. MARKHAM,
Deputy Attorney General.

SUPREME COURT OF THE UNITED STATES.

No. 320.—October Term, 1926.

Charles H. Graves, Plaintiff in Error, *vs.* The State of Minnesota. } In Error to the Supreme Court of the State of Minnesota.

[November 22, 1926.]

Mr. Justice Sanford delivered the opinion of the Court.

This case involves a single question relating to the constitutionality of the Minnesota statute regulating the practice of dentistry. Gen. Laws, 1889, c. 19, and amendments; embodied in Gen. Stats., 1923, §§ 5757-5763.

This statute prohibits the practice of dentistry by persons who have not been licensed by a board of dental examiners. Every applicant for a license is required to present himself for examination by the board and "produce his diploma from some dental college of good standing", of which the board shall be the judge, with satisfactory evidence showing his good moral character. The board shall then give him an examination to test thoroughly his fitness for practice; and, if he successfully passes this, shall register him as a licensed dentist.

Graves, the plaintiff in error, had applied for a license, but had been refused an examination by the board because he had no diploma from an accredited dental college. He was thereafter prosecuted in a municipal court for violating the statute by practicing dentistry without a license. He asserted his fitness to practice, and interposed a challenge to the constitutional validity of the statute. This was overruled, and he was found guilty and sentenced. The judgment was affirmed by the Supreme Court of the State, 207 N. W. 560; and the case is brought here by writ of error on the constitutional question.

The specific contention is that the requirement of the statute that an applicant for a license must present a diploma from an approved dental college before he can be examined by the board—which, in effect, limits the granting of licenses to persons having

diplomas from dental colleges of good standing—is unreasonable, arbitrary and discriminatory, and violates the due process clause and other provisions of the Fourteenth Amendment.

It is well settled that a State may, consistently with the Fourteenth Amendment, prescribe that only persons possessing the reasonably necessary qualifications of learning and skill shall practise medicine or dentistry. *Dent* v. *West Virginia*, 129 U. S. 114, 122; *Douglas* v. *Noble*, 261 U. S. 165, 167. In the *Dent* case this Court said: "The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity." (p. 122.)

In the *Douglas* case, which involved the constitutionality of a statute containing similar provisions to those of the Minnesota statute, the validity of the provision that only persons having diplomas from a dental college should be eligible to examination for a license to practice dentistry, although not directly involved, was distinctly implied. The specific objection there was that the statute did not state in terms the scope and character of the examination to be made by the board of examiners, and therefore conferred upon it arbitrary power to grant or withhold licenses. But in answering this contention this Court said that the provision that the applicant must be a graduate of a reputable dental school and of good moral character, clearly indicated "the general standard of fitness and the character and scope of the examination"; and the constitutionality of the statute was sustained. (p. 167.)

By enacting the present statute the State has determined, through its legislative body, that to safeguard properly the public health it

is necessary that no one be licensed to practice dentistry who does not hold a diploma from a dental college of good standing. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute. *Mugler* v. *Kansas*, 123 U. S. 623, 661. And the case is to be considered in the light of the principle that the State is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise the authority vested in it in the public interest. *Great Northern Ry. Co.* v. *Clara City*, 246 U. S. 434, 439; *Gitlow* v. *New York*, 268 U. S. 652, 668.

Clearly the fact that an applicant for a license holds a diploma from a reputable dental college has a direct and substantial relation to his qualification to practice dentistry. We cannot say that the State is acting arbitrarily or unreasonably when, in the exercise of its judgment, it determines that the holding of such a diploma is a necessary qualification for the practice of dentistry; or that the distinction made in the granting of licenses between applicants who hold such diplomas and those who do not, is a classification which has no real or substantial basis. And the constitutionality of the statute must be sustained.

This conclusion is in harmony with the decisions in other state courts involving the constitutional validity of statutes regulating the practice of medicine or dentistry which contain similar or analogous provisions, as well as with the earlier Minnesota decisions. *In re Thompson*, 36 Wash. 377; *State* v. *Creditor*, 44 Kans. 565; *State* v. *Green*, 112 Ind. 462; *People* v. *Phippin*, 70 Mich. 6; *Ex parte Spinney*, 10 Nev. 323; *State* v. *Vandersluis*, 42 Minn. 129; *State* v. *Graves*, 161 Minn. 422. And see *Hewitt* v. *Charier*, 16 Pick. (Mass.) 353; *Ex parte Whitley*, 144 Cal. 167; *Wert* v. *Clutter*, 37 Ohio St. 347; *Timmerman* v. *Morrison*, 14 Johns. (N. Y.) 369. And it is not in conflict with the decisions in *Smith* v. *Texas*, 233 U. S. 630, and *State* v. *Walker*, 48 Wash. 8, on which the plaintiff in error relies, which dealt with statutes attaching unreasonable and arbitrary requirements to the pursuit of the employments or trades of locomotive engineers and barbers. These manifestly involve very different considerations from those relating to such professions as dentistry requiring a high degree of scientific learning.

The judgment is

Affirmed.